79-799

No. 79-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

LEROY B. JONES, NANCY GULLO MAZARIS, WILLIAM TOPPIN, BARBARA DALLAS, WAYNE HINTZ, NANCY LEE HINTZ, PHILIP VALENTI, SUSAN CHAPLIN, CHARLES PARK, THEO FORD, COMMITTEE TO ELECT LYNDON LAROUCHE and the U.S. LABOR PARTY,

Petitioners,

v.

FEDERAL ELECTION COMMISSION, WILLIAM YOWELL, ROBERT DOUGHERTY, PEGGY SIMS, ORLANDO B. POTTER, WILLIAM OLDAKER, ROBERT COSTA, JOSEPH STOLTZ, CHARLES STEELE, KEITH VANCE, ELMO ALLEN and UNKNOWN AGENTS OF THE FEDERAL ELECTION COMMISSION,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

David S. Heller
304 W. 58th Street
5th Floor
New York, New York

Attorney for Petitioners

INDEX

TABLE OF CASES AND AUTHORITIES

No. 79-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

LEROY B. JONES, NANCY GULLO MAZARIS, WILLIAM TOPPIN, BARBARA DALLAS, WAYNE HINTZ, NANCY LEE HINTZ, PHILIP VALENTI, SUSAN CHAPLIN, CHARLES PARK, THEO FORD, COMMITTEE TO ELECT LYNDON LAROUCHE and the U.S. LABOR PARTY,

Petitioners,

v.

FEDERAL ELECTION COMMISSION, WILLIAM YOWELL, ROBERT DOUGHERTY, PEGGY SIMS, ORLANDO B. POTTER, WILLIAM OLDAKER, ROBERT COSTA, JOSEPH STOLTZ, CHARLES STEELE, KEITH VANCE, ELMO ALLEN and UNKNOWN AGENTS OF THE FEDERAL ELECTION COMMISSION,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Leroy B. Jones and the other above named individual petitioners, the Committee to Elect LaRouche, the 1976 principal campaign committee of Lyndon H. LaRouche and the U.S. Labor Party, a political party committee, pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in this case on August 23, 1979.

OPINIONS BELOW

The Opinion of the United States District Court was unreported and is set forth in Appendix B. The opinion of the Court of Appeals has not yet been reported and is set forth in Appendix C with its original pagination.

JURISDICTION

The judgment of the Court of Appeals was entered on August 23, 1979. This petition for Writ of Certiorari was filed within 90 days of that date. The jurisdiction of this Court is invoked under 26 U.S.C. Section 1254 (1).

QUESTIONS PRESENTED

1. Was the practice of surprise visits to voters' residences or businesses intended to, and did it in fact, chill their First Amendment rights?
2. Did the actions of the Federal Election Commission ("FEC") violate the Fourth, Fifth, Sixth, and Ninth Amendment rights of the plaintiffs?
3. Does the FEC have the statutory authority to contact individual contributors in the manner complained of herein?

CONSTITUTIONAL PROVISIONS

The following provisions of the United States Constitution are relevant to the questions presented.

ARTICLE III
Section 2

The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all cases of admiralty and maritime jurisdiction;—to Controversies between two or more states;—between a State and Citizens of another State;—between Citizens of the same State; claiming Land under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

AMENDMENT I

Congress shall make no law respecting an establishment of religion or prohibiting free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the Government for redress of grievances.

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any

person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law, nor shall private property be taken for public use, without just compensation.

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

AMENDMENT IX

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

PROVISIONS OF THE UNITED STATES CODE

The following provisions of the United States Code are relevant to the questions presented and are all set forth in full in Appendix A: 2 U.S.C. 437d, 2 U.S.C. 438, 5 U.S.C. 555, 26 U.S.C. 9033 (a) and (b), and 26 U.S.C. 9038.

STATEMENT OF THE CASE

This is a Petition for Certiorari, taken from an Opinion and Order of the United States Circuit Court of Appeals for the District of Columbia, dated August 23, 1979, affirming the granting of Defendants-Respondents' Motion for Summary Judgment and denying Plaintiffs-Petitioners' Motion for Preliminary Injunction.

Plaintiff Committee to Elect Lyndon LaRouche ("CTEL") is a political action committee located in New York City. Plaintiff U.S. Labor Party ("USLP") is a national political party with headquarters in New York City. Both CTEL and USLP participated in the November, 1976 Presidential elections and, pursuant to FEC regulations, filed quarterly financial reports with the FEC. All the remaining Plaintiffs are individuals who made monetary contributions to CTEL during the course of the 1976 election, but who had no reporting obligation with the FEC and who had absolutely no contact with the FEC at the time of the 1976 election. The Defendants are the Federal Election Commission ("FEC") and various members and agents of the FEC.

CTEL was formed in October, 1975, in order to support the bid of Lyndon LaRouche for the Presidential nomination of the U.S. Labor Party for the 1976 election. On October 14, 1979, CTEL notified the FEC that it had qualified for Presidential primary matching funds pursuant to 26 U.S.C. 9033 (a) and (b), (enacted as the Presidential Primary Matching Funds Act). In November, 1976, FEC auditors came to the CTEL offices and conducted a complete audit of CTEL's books and records to determine if CTEL had fully qualified for the matching fund payments. (It is to be noted that normally, upon notice of qualification by the candidate, the FEC authorizes payment first, in order to provide funds to the candidates before the election, when it is clearly most effective.) *Lyndon LaRouche was the first candidate to be*

fully audited by the FEC prior to any payment of funds. The FEC extended its audit/investigation of CTEL in January, 1977 by launching an extensive field investigation (surprise visits) of the individuals who had contributed money to CTEL. Then, on February 10, 1977, the FEC formally decided that CTEL had failed to fulfill all necessary requirements and that its application for matching funds would be denied.

Plaintiffs filed their Complaint on April 28, 1977, and alleged that the field investigation by the Defendants was beyond the scope of the FEC's authority and jurisdiction and that the scope and manner of investigation by the Defendant FEC agents was conducted so as to deprive CTEL and its contributors of their constitutional rights; and that the field investigation was authorized and conducted with the purpose of depriving Plaintiffs of their constitutional rights or with gross negligence regarding Plaintiffs' constitutional rights.

Shortly after the filing of the Complaint, CTEL learned that agents of the FEC were conducting a second series of surprise visits to CTEL contributors. Plaintiffs requested the FEC, by letter, to cease these investigations until resolution of the lawsuit. When this request was denied by the FEC, by a letter of June 23, 1979, Plaintiffs filed a Motion for a Temporary Restraining Order or for Preliminary Injunction on June 24, 1977. At a hearing before the Court on June 28, 1977, Plaintiffs' Motion for Temporary Restraining Order was denied. On July 18, Defendants filed a Motion to Dismiss or for Summary Judgment, to which Plaintiffs replied on August 22, 1977. On September 28, Plaintiffs noticed the deposition of Thomas E. Harris, Commissioner of the FEC. By Motion of October 12, Defendants sought a protective order to prevent Harris' deposition.

By Memorandum and Order dated October 26, 1977, the District Court denied Plaintiffs' Motion for a Preliminary Injunction and granted Defendants' Motion for Summary Judgment.

PRELIMINARY STATEMENT

The District Court granted Defendants' Motion for Summary Judgment based on two findings of fact and law. Plaintiffs believe that both findings were clearly in error and require reversal. The District Court found: (1) that Defendants' acts were "reasonable" and within their statutory authority; and (2) that Plaintiffs suffered absolutely no violations of their constitutional and common law rights.

As Plaintiffs demonstrate herein, the record does not support Defendants' contention that their qualified immunity shields them from the consequences of their acts. Additionally, Summary Judgment is not appropriate where fact issues of good faith and reasonableness are present. Finally, Plaintiffs have set forth extensive facts demonstrating loss of their constitutional rights.

This case presents, squarely, the question of whether a federal agency, the FEC, is constitutionally or statutorily empowered to predetermine the "legitimacy" of electoral candidates, and, upon such determination, inflict summary punishment upon the supporters of those candidates which the FEC determines are not "legitimate."

The Plaintiffs are contributors to and supporters of the 1976 campaign of Lyndon H. LaRouche, Jr. for the Presidency of the United States. That Mr. LaRouche was a "minor" candidate at that time is undisputed. That such candidates and their supporters are vulnerable to threats and political pressures aimed at their jobs and/or privacy is, and has been, the proper subject of judicial notice. See *Buckley v Valeo*, 424 U.S. 1, 65 (1976).

> We are not unmindful that the damage done by disclosure of associational interests of the minor parties and their members and to supporters of independents could be significant. These movements are less likely to have a sound financial base and thus are more vulnerable to falloffs in contributions. In some instances *fears of reprisals may deter contributions to the point where the movement cannot survive.* The public interest also suffers if that result comes to pass, for there is a consequent reduction in the free circulation of ideas both within and without the political arena.
>
> *Buckley v Valeo*, 424 U.S. at p. 65.

In this context, it is also clear that the following actions were intentionally undertaken by the Defendants.

1. Of the many candidates seeking matching funds from the FEC, the supporters of only one candidate, Mr. LaRouche, were subjected to "field audits." Individuals supporting LaRouche were subjected to not one, but two field audits, one of which occurred *even after LaRouche's application for matching funds was denied.* In both these "audits" questioners badgered Plaintiffs about their political beliefs, affiliations, and the like. These were questions completely unrelated to the ostensible purpose of the visits.

2. Of all the many candidates, whether seeking matching funds or not, the supporters of but one faced the experience of having federal agents appear at their places of employment to investigate their political contributions. Those were the supporters of LaRouche.

3. Of all the voters for any candidate for any office in the history of this Republic, only one group has been faced with the specter of interrogation by Federal officials as to their political beliefs. Those voters were the Plaintiffs at bar.

The decision of the District Court would have embedded in the law a precedent which would have granted the FEC the power selectively to approach, intimidate, harass, and search any person identified as a supporter of any candidate which the FEC, in its own, internal processes had determined might be engaged in irregularities involving the Presidential Primary Matching Payment Account Act. Since virtually any serious candidate not personally possessed of unlimited wealth must take advantage of

that Act, the followers of all such candidates would be placed in the peril that Plaintiffs at bar were placed in.

It would be completely to misapprehend the nature of any bureaucracy to suppose that such powers, once granted the FEC, would be limited in their application solely to supporters of Mr. LaRouche. Although it is probable that Mr. LaRouche's supporters were chosen by the FEC as an appropriate "test case" on the presumption that few or no members of the Federal Judiciary could empathize with them, there is no reason to believe that, once granted the powers sought, the FEC could not use them to maintain any party in office by pressuring the supporters of a challenger. Yet, except for one case so unique and blatant as to be virtually unrepeatable, the Circuit Court is prepared to grant just those powers to the FEC. No republic could grant such power to an administrative agency and still pretend to offer a free election franchise to its citizenry.

I. THE PRACTICE OF SURPRISE VISITS TO VOTERS PLACES OF RESIDENCE OR BUSINESS WAS INTENDED TO, AND DID IN FACT, CHILL THEIR FIRST AMENDMENT RIGHTS.

The Court below sweepingly and without reservation rejected Plaintiffs' First Amendment claims, ~~affirming~~ affirming Summary Judgment against Plaintiffs entered in the District Court. The Court created the following rule, stated in footnote 24 of its decision.

1. That monetary damages for violations of First Amendment rights are recoverable under *Bivens v Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971) as applied in *Dellums v Powell*, 566 F.2d 167 (D.C. Cir. 1977), *cert. den.* 438 U.S. 916 (1978).

2. That FEC agents accosted some of the Plaintiffs at least (Toppin and Jones) and confronted them with questions concerning their political beliefs. (See Slip Opinion, footnote 19 of the decision.)

3. The Court had already held that it "fail(ed) to see

any possible relation, however tenuous, between the alleged inquiries" (concerning political beliefs) "and the Commissioners' responsibilities under the Act." (See Slip Opinion at page 18.)

4. The Court ruled however that:

> Nonetheless, where, as here, there are no allegations that appellants Jones or Toppin answered the questions about their political beliefs, that any sanctions whatsoever were taken against them for their refusal to so answer, that the mere asking of the specific questions at issue chilled their associational rights, or that any of the appellants in this case had been subject to prior harassment by the Commission, we simply cannot say that the District Court erred in concluding that appellees were entitled to judgment as a matter of law on this Bivens claim.
>
> Slip Opinion at page 24, footnote 24

This ruling, made despite the specific language in *Buckley*, is both illogical and erroneous. Is a Fourth Amendment violation not a violation if the illegal search fails to uncover incriminating evidence? Of course not. Were that the law, a Motion to Suppress would be appropriate, but the *Bivens* case would not have been litigated. Is a coerced confession no longer a basis for an action if not admitted in Court? The very statement refutes itself.

Yet, the District Court held, and the Circuit Court affirmed, that because the Plaintiffs did not answer the political questions, they were not chilled in their political exercise *as they plainly alleged* despite the Circuit Court statement to the contrary. The Court itself recites the harrowing experience of Plaintiff Jones (Slip Opinion at pages 31-32), and the fact that Toppin stated that he was coerced and "intimidated" (Slip Opinion at page 30). Even on the narrow basis that the Court below considered this claim, these two Plaintiffs were cruelly chilled in their First Amendment exercise. Mr. Jones' health problems,

necessitating a visit to a cardiac specialist (Appendix, p. 111a, the same page of the Jones affidavit quoted in the Circuit Court's Slip Opinion on page 32) placed before him the specter of death. Does the Circuit Court require something *more* chilling? Or is it the ruling of the Circuit Court that Mr. Jones' cardio-pulmonary system is sensitive only to Fourth Amendment violations, rather than First Amendment violations? Compare Slip Opinion footnote 24, to page 32. Even the Circuit Court admits that the interview had "some chilling effect" (Slip Opinion at page 26). Yet, even aware of the rigorous standards for Summary Judgment:

> Whether, on a reading of the record *most favorable to appellants*, appellees were entitled to a judgment as a matter of law.
>
> Slip Opinion at page 3.

The Circuit Court affirmed Summary Judgment against Jones, Toppin and all the other Plaintiffs on their First Amendment claims, despite the fact that none of the FEC Commissioners, whose motivation is at the heart of Plaintiffs' case, so much as submitted affidavits in support of their Motion for Summary Judgment.

The *Buckley* case made it clear that new political parties and candidates are vulnerable in a different and special way from established ones. The Supreme Court made it clear that "fears of reprisals may deter contributions to the point where the movement cannot survive," *Buckley v Valeo*, 424 U.S. 1, 65 (1976). Yet, it was just the sort of reprisal that the Supreme Court warned of, that the FEC visited upon the Plaintiffs herein, and upon no one else. The Circuit Court, despite this, was so insensitive to the *Buckley* highlighted issue that it badly misread the record before it, and indeed, read the record most favorably to Defendants, which is a basic error of law. The Court further erred in failing to apply the rule that legislation and its enforcement, in areas limiting expression of First

Amendment rights must be supported by a compelling state interest, and proceed using the least restrictive of the available alternative means. The procedures adopted by the FEC were, plainly, intentionally calculated to be the *most* intrusive possible means of enforcement.

The record reveals, contrary to the Circuit Court's statement, that only Plaintiffs Toppin and Jones alleged chill of their First Amendment rights. This is because (Slip Opinion at page 17) the Court states that while questions as to donor's *beliefs* were improper questions (Slip Opinion at page 18) questions as to donor's "affiliations, activities, and financial relationships" were proper. This defies logic and precedent. The First Amendment protects political *expression*, not political belief: few dictators would be dissatisfied with a populace which, disapproving of the government in power, yet did not speak out against it. The actionable tort of chilling First Amendment *exercise* refers to *activity*, and not belief. In *NAACP v Alabama*, 357 U.S. 449 (1958), the Defendants sought *organizational* information, not a poll of the subjective beliefs of the populace. The Supreme Court held that since belief was only manifested through political or organizational activity, to distinguish one from the other was nonsensical and unconstitutional. Yet, even assuming *arguendo* that inquiry into *donations* was proper, the Circuit Court erred when it held that inquiry into *affiliation* was also proper. This put it directly in contradiction to *NAACP v Alabama* and its numerous progeny, (see footnote 21 of the Slip Opinion, page 21) and ignored the evidence of chill and fear inculcated by such questioning. See affidavits of Theo Ford and Terry Tinnin. (See Appendix p. 110a, 103a).

In *NAACP v Alabama*, *supra*, the information sought was the "names and addresses of all its (the NAACP's) Alabama members and agents, *without regard to their positions or functions in the Association*," 357 U.S. at 451 (emphasis added). Thus, at the threshhold, the Alabama inquiry was less intrusive than that at bar. In fact, ironically, Plaintiffs at bar had already furnished the FEC

with this information, which the FEC proceeded to abuse in the manner complained of. During the course of litigation Alabama sought further records and documents, in precisely the same manner and description as FEC has sought in a related case. See 357 U.S. at 453 and *FEC v CTEL*, D.C. Cir. No. 77-1184.

Justice Harlan, writing for a unanimous Court, recognized that free speech and the untrammeled right to association cannot be separated. See *DeJonge v Oregon*, 299 U.S. 353, 364 and *Thomas v Collins*, 323 U.S. 516, 513. Unlike the Circuit Court, (see Slip Opinion at page 20) Justice Harlan did not demand a showing of direct action against members:

> In the domain of these indispensable liberties, whether of speech, press, or association, the decisions of this Court recognize that abridgement of such rights, even though unintended, may invariably follow from varied forms of government action . . .
>
> It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute . . . effective . . . restraint on freedom of association . . . *this Court has recognized the vital relationship between freedom to associate and privacy in one's associations.*

357 U.S. 461-2. (Emphasis added.)

Perhaps, over-estimating the good faith of the FEC, Plaintiffs disclosed their names. The result is before this Court—the Plaintiffs, and only the Plaintiffs, of all the voters in the history of this Republic, were subjected to sudden, terrifying raids and inquiries into their beliefs and associations. This is precisely the treatment the NAACP feared in Alabama, and just the treatment the FEC accorded Plaintiffs. Yet, incredibly, the Court below *upheld* inquiry into associational affiliation, while distinguishing and disallowing inquiry into beliefs, an ultrasophistic and practically useless distinction in light of the

inextricable interrelationship between belief and affiliation recognized by Justice Harlan. In applying this concept to the NAACP, Justice Harlan was using an idea originally conceived to protect nascent political bodies, such as Plaintiffs are members of. See, *Sweezy v New Hampshire*, 354 U.S. 234, 250-251. Certainly the FEC has requested, and the Court below has granted, exactly the sort of sweeping and undefined powers which lend themselves to employment against unpopular or disfavored targets, whether the USLP today or the GOP tomorrow. See *NAACP v Button*, 371 U.S. 415, 435 (1963). That latter case pointedly rebuts the Appellate Court's belief that *pre-existing* abuse is the necessary precondition to a First Amendment association claim (Slip Opinion at page 20). In *NAACP v Button*, *supra*, the Court plainly called attention to the deterrent power of the *possibility* of such abuse:

> It makes no difference whether such prosecutions or proceedings would actually be commenced. It is enough that a vague and broad statute lends itself to selective enforcement . . .

371 U.S. at 435.

The case at bar shows, perhaps, the clearest example of selective imposition of punitive measures under the guise of "enforcement" that could be conjured up. It must be recalled that the case at bar does not represent a legislative inquiry (see, e.g. *Gibson v Florida*, 372 U.S. 539 (1963), cited in footnote 21 of the Opinion below) where the full panoply of rights was accorded the target of inquiry. Rather, the early morning knock on the door and the threatening and over-bearing demeanor of multiple federal agents were the investigative tools, and the Plaintiffs were intentionally isolated from legal counsel, due process, or the intervention, before or during the search and inquiry, of an impartial magistrate. The Appellate Court committed clear error, then, in affirming a grant of

Summary Judgment against Plaintiffs' First Amendment claims because Plaintiff had not made a prior showing of government harassment.

Moreover, even were the Court correct in its legal standard, it erred in applying that standard, since there was before it judicially-noticeable proof of just such harassment. See *Doe v Martin*, 404 F. Supp. 753 (D.D.C., 1975), discussed *infra*. The Court below, in another case, clearly recognized the distinction between harassment and chilling of First Amendment rights. In *Dellums v Powell*, 566 F.2d 167, 174 (D.C. Cir. 1975) *cert. den.* 438 U.S. 916, (1978), footnote 6, the Court upheld an award which separated compensation for politically motivated, false imprisonment from that for violation of First Amendment rights and awarded compensation for the latter to people, such as Rep. Dellums, who were not themselves arrested. The distinction is fully discussed at 566 F.2d 184, *et seq.* Whatever the harm or lack of harm to the *individual* Plaintiffs, the harassment of the individual Plaintiffs (even assuming *arguendo* that it was the *first* such harassment visited on USLP and/or CTEL supporters) harmed the organizational Plaintiffs. Just as Rep. Dellums was awarded damages when his audience was arrested without a requirement being imposed by the Court that his audience be *repeatedly* arrested, CTEL and USLP merit damages when *their* audience is intimidated, as the Jones, Toppin, and Ford affidavits clearly allege.

> The point of ultimate interest is not the words of the speakers, but the minds of the hearers and manifestly a speaker will be deprived of an opportunity to affect those minds if his audience is arrested and carted away.
>
> 566 F.2d at 195.

The Court below, without so saying, seems to now rule that merely terrorizing the audience, causing one member to suffer heart complications (Jones), without a custodial

arrest, is permissable. In fact, the Court holds such activity to be so *clearly* permissable that, as a matter of law, it affirms Summary Judgment against such a claim. In so doing the Court below directly disregarded this Court's definitive holding in *Butz v Economou*, 438 U.S. 478 (1978).

The Circuit Court distinguishes the *NAACP* cases and the *Buckley* case (Slip Opinion at page 26) solely on the grounds of lack of evidence of past harassment of USLP members. Again, this distinction is both illogical and false in fact. The idea that activity *chilling in itself* (see affidavits of Jones, Ford, Tinnen, and Toppin, pp. 111a, 110a, 103a, 108a, Appendix) is excusable in isolation *as a matter of law*, a sort of "each agency is entitled to one bite" rule, is without precedent. Such a rule would, in effect, vest the sovereignty of the Republic in a body of unelected, unaccountable governmental agencies, and substitute the whim of bureaucracy for the rule of law. Secondly, the state of the record is solely a factor of the extraordinary rapidity with which the Court granted Summary Judgment against Plaintiffs. The case was filed on April 28, 1977. Before discovery could commence, Defendants filed for Summary Judgment on July 18, which was granted on October 26, 1977, mooting Defendants' pending motion for a Protective Order, which had shielded FEC Commissioner Harris from discovery. However, this Court can take judicial notice of the fact that the USLP was for years the target of federal government harassment, a particular COINTELPRO target, a frequent litigant in seeking protection from such attacks on its members. See e.g. *Ghandi v City of Detroit and the FBI*, No. 4-72019 (E.D. Mich.) (an armed raid on the USLP headquarters on the pretext of "searching for an informant" who had infiltrated into the USLP *electoral* slate and was in the custody of the FBI while the raid went on); *LaRouche v Kelly*, 75 Civ. 6010 (S.D.N.Y.) (a seven-year campaign of harassment, coordinated dissemination of false and defamatory leaflets, and other characterizations by the FBI acting through various "fronts," harassment of USLP members—inter-

ference with employment, landlord, and ~~mutual~~ marital relationships, etc.). Indeed, then FEC Chairman Thomas Harris had, prior to being nominated to the FEC, been involved in "anti-USLP" activities for the AFL-CIO, a fact absent from the record merely because Plaintiffs were never given the opportunity, in discovery, to substantiate it.

In *Doe v Martin*, 404 F. Supp. 753 (D.D.C., 1975), the Court directed the FEC to consider not applying the disclosure rule to the Socialist Workers Party (SWP). The reason was that disclosure might result in federal government harassment of SWP supporters.

> Identification and fear of reprisal might deter perfectly peaceful discussion of public matters of importance.
>
> 404 F. Supp. at 758.

The material disclosed in the above cited cases (over 15,000 documents have been released to Plaintiffs in *LaRouche v Kelly*, *supra*, detailing a seven-plus year program of government harassment and disruption) serve to bring the case at bar within the ambit of *Doe v Martin*. (However, such a showing is far more than is necessary). The harassment complained of at bar, and shown in affidavits in the record, *is by the FEC itself*. There is no ripeness problem, no element of speculation in Plaintiffs' claims—*the harassment actually occurred*. The mere *potential* for harassment:

> . . . exacts as a price for monetary support of a candidate a willingness to *risk* not only social disapproval but harassment . . .
>
> 404 F. Supp. at 756. (Emphasis added.)

What exactly does the Court below make of the experience of Mr. Jones, which it sets forth in Slip Opinion at pages 7-9? Is the Court below overruling *Doe* and *Dellums*? Or is demonstrated, intentional, vindictive, and

discriminatorily applied harassment a lesser evil than the *risk* of harassment? It is respectfully submitted that the FEC is prepared to tolerate parties such as the SWP, which promises to exist indefinitely as a political backwater for the ineffectual, but reacted with vengeance when Plaintiffs, in their first national campaign, achieved ballot status in 26 states, gathered 500,000 petition signatures, and met the qualifications for matching funds.

> The potential of unorthodoxy to be established in time as the vanguard of democratic thought
>
> 404 F. Supp. at 758

is a concept acceptable in the abstract, but neither the FEC nor the Court below were willing to apply it to the one minority party ever to apply for matching funds. There is nothing of *Laird v Tatum*, 408 U.S. 1 (1972), present in the case at bar. Plaintiffs have not discovered federal investigatory actions and declared themselves retrospectively "chilled." Rather, federal officials, Defendants herein, confronted the Plaintiffs at their homes and places of employment with threats and menace. In one case, a Plaintiff's health was badly undermined as a result. "Chill" in such circumstances is not subjective, but based on the most objective sort of evidence—namely that mere support of an electoral candidate can and did result in a "secret police" type of intimidating interview at one's home or place of work, without warning and without protection. If Plaintiff Jones' chill is "subjective" or imaginary, as the Circuit Court implicitly ruled in dismissing the First Amendment claim, then objective reality does not exist for that Court.

The Court further erred in applying the legal standard for Summary Judgment by interpreting the factual context before it so as to draw every conceivable inference on Defendants' behalf.

The most glaring instance of this lies in the Circuit Court's consideration of the *timing* of the surprise visits.

The sole, ostensible purpose of the audit was to discover the eligibility of the LaRouche campaign for matching funds. The field audit procedure was formulated especially for the LaRouche campaign, although not probable but actual fraud in other instances (e.g., that of Milton Shapp) had been dealt with in a more sensitive, fair, and even-handed fashion. In Shapp's case, the viability of the political process was given priority and funds were disbursed, and later reclaimed. Shapp, like Harris and half of the FEC Commission, was a Democrat. LaRouche did not, in 1976, share party membership with any member of the FEC, a factor the Circuit Court did not discuss.

In any event, during January, 1977, the "field audit" went on. On February 10, 1977, the FEC denied LaRouche matching funds, which ruling LaRouche's principal campaign committee is litigating. On April 28, 1977, the Plaintiffs at bar commenced suit for the wrongs done them in January. *Almost immediately thereafter, the FEC, for the second time, subjected LaRouche supporters, but no other voters, to unannounced, harassing, surprise interviews.* (See Appendix, p. 105a). Plaintiffs' attorney discovered these interviews by June 17, 1977. Allowing for two weeks for voters to report them, if at all, to the USLP, for USLP to communicate with its attorney, and for him to act, this means that the second set of interviews commenced, *at the latest*, by June 3. The timing of this second unique inquiry virtually demands that the obvious inference of punitive intent be drawn as Plaintiffs' counsel argued below. That only *one* set of voters should be *twice* subjected to an intrusive, unprecedented procedure, nowhere described in the FEC's operating guidelines (See *CTEL v FEC*, D.C. Cir. No. 77-1186, Slip Opinion at page 28) within six months, and that the second should occur within a month of the time when the April 28, 1977, complaint would have been served upon Defendants, and come to the attention of the persons authorizing the second set of interviews, compels the conclusion alleged in Plaintiffs' Complaint and supporting affidavits. Yet the Circuit Court merely characterizes these interviews as

starting "on or before July 14, 1977" (Slip Opinion at page 11) (raising the question of how Plaintiffs' counsel knew of them on June 17) and motivated solely by bona-fide investigative purposes. This decision, going to the very heart of Plaintiffs' claim of bad faith on the part of the FEC, is without the support of a speck of evidence anywhere in the record. Yet the Court's sole observation about the *admittedly* chilling second set of interviews, (page 28 of the Slip Opinion) merely states that there are no "specific allegations of unreasonable investigative practices" connected to them. The Court overlooked the fact that no specific harm befell the NAACP as a result of the disclosure unsuccessfully sought in *NAACP v Alabama, supra*. The Court prevented that harm, realleging, as in the case at bar, that the very *existence* of such repeated and malintended interviews strikes at the heart of the Plaintiffs' organizational existence, whatever the specific dynamics of the interviews. Surely it is less intrusive merely to make one's name public than to be suddenly, rudely confronted, and threatened by federal officials regarding one's organizational affiliations. Yet, the Court *permits* the latter vis-a-vis the USLP and CTEL, while the law forbade the former in *NAACP v Alabama, supra*. The totality of the circumstances is the fact that: (a) *only* LaRouche voters were confronted, (b) that questions concerning political beliefs and political applications (as well as contribution history), were asked and asked in an intimidating fashion, (c) that the FEC's Chairman was, and could have been shown to be on the record, harshly biased against the Plaintiffs, (d) that Plaintiffs had been the subject of past government harassment, and (e) the timing of a second, vindictive set of interviews plainly calculated and intended to punish Plaintiffs for having filed a Complaint against the FEC, plainly indicates that Plaintiffs have a viable *Bivens* claim for intentional deprivation of their First Amendment rights. The Court below plainly erred in affirming a grant of Summary Judgment which deprived them of that right. The *Buckley* decision was written specifically to inform the FEC, above

all other agencies, of the care that must be exercised in regulating political campaign activity. Plainly, the FEC did not heed the *Buckley* Court's advice. Should the case at bar not be reversed, the *Buckley* decision will be reduced to an abstract, impotent admonition, without any effect on the day-to-day activities of the FEC.

II. THE ACTIONS OF THE FEC VIOLATED THE FOURTH, FIFTH, SIXTH AND NINTH AMENDMENT RIGHTS OF THE PLAINTIFFS

The Complaint alleged deprivation of the Plaintiffs' Fourth, Fifth, Sixth and Ninth Amendment rights, as well as making statutory and common law *prima facie* tort claims. The Court's analysis of the Plaintiffs' Fourth Amendment claims, which concludes that in all cases but that of Jones the interviews were consensual, is also plainly in error. The factors of coercion, threat, and extorted "consent" are equally present in all cases. In no case were the Plaintiffs advised of their rights, which, in light of Defendants' statement that the second interviews were for the purpose of criminal investigation, ought to subject these interviews to strict scrutiny. The Court (Slip Opinion at page 30) dismisses Plaintiffs' affidavits as "conclusory," but the process of discovery, whereby these affidavits might be fleshed out, was aborted by the Courts below. In each case an officer, claiming legal authority, presented himself and demanded either documentary or testimonial evidence. The Courts have found that such a circumstance negated voluntary consent, especially in light of the lack of warrant, or any impartial, magisterial authorization of the search and interrogation. *Schneckloth v Bustamonte*, 412 U.S. 218 (1973), *Bumper v North Carolina*, 381 U.S. 543 (1968), and *Marshall v Barlow's*, 436 U.S. 307 (1978).

The Court's hostility to the Plaintiffs' constitutional claims, is shown in high relief with regard to Plaintiff Jones, the one Plaintiff whom the Court found *had* been coerced, to an even greater extent than the Plaintiff in

Bumper, see Slip Opinion at page 33. If Jones' Fourth Amendment rights were violated, *a fortiori*, his Fifth and Sixth Amendment rights were also denied him, since the federal agents demanded testimonial statements from him (see Slip Opinion at page 18, relating to oral questions regarding "irregularities") and denied him the right to counsel. Yet, without even discussing the matter, Jones' claims in these regards were swept away. Moreover, by watering down the Plaintiffs' constitutional claim for deprival of First Amendment rights to a statutory inquiry over FEC powers, limited to prospective injunctive relief (Slip Opinion at page 19) the Court subjects Plaintiffs to a cynical mockery. Baldly put, what do Plaintiffs care whether these Defendants might be restrained from transgressing their investigative powers in the future? Are Plaintiffs to give up their usual occupations and take up the habit of watching the FEC's activities to see if such a (hypothetically granted) injunction is broken, so that in another case (where, in all probability, they lack standing) they may again appear to be locked out of court by a callous judiciary? *The Plaintiffs were harassed for no other reason than supporting the "wrong" candidate from the FEC's viewpoint*. They were damaged in their rights, and in Jones' case, in his health and well being directly. Their injuries were occasioned by the FEC's hostility toward Plaintiffs' First Amendment exercise and they were damaged in their First Amendment rights. The holdings of *NAACP v Alabama*, *supra*; *Bivens*, *supra*, as well as the doctrine of *prima facie* tort dictates that they be given the right to seek monetary relief. They neither are protected by, nor can they be offered, the empty mockery of injunctive relief.

Plaintiffs' statutory claims are set forth in the accompanying petition in *CTEL v FEC*, D.C. Cir., No. 77-1184. In sum, Plaintiffs' claim is not, as the Court below states, merely limited to the scope of questioning. Rather, in one case, without any statutory or regulatory basis therefore, the FEC invented a special, intrusive, abusive, and aggressive means of investigation—the never since or pre-

viously employed "field audit" used against Plaintiffs. That procedure is in Plaintiffs' view not statutorily authorized, and *assuming arguendo* that it is, its use to pry into organizational affiliations as approved by the Court below is barred by *NAACP v Alabama, supra.*

The word "investigation" is not a magic charm which, when spoken, imbues all activities with the power of reason. Nor can an investigation because it involves the FEC, and concerns contributors, therefore, inquire into membership and affiliation without transgressing its lawful scope. The *Buckley* Court demanded caution in these areas, and, regarding all candidates but one, the FEC refrained from inquiring of voters even so much as to *bona fides* of their contributions prior to disbursing matching funds.

The Plaintiffs at bar, however, were not only badgered concerning contributions but also about affiliations and beliefs. The Court below committed plain error in *approving* questions about affiliations and beliefs.

THE FEC HAS NO STATUTORY AUTHORITY TO CONTACT INDIVIDUAL CONTRIBUTORS IN THE MANNER COMPLAINED OF HEREIN

The FEC Commissioners, staff personnel and other employees have undoubtedly read or been informed of *Buckley v Valeo, supra*, and are well aware that the Supreme Court was concerned with the potential infringement of the constitutional rights of minor parties. These Defendants could foresee that an investigation which had as its object the contacting of over 20 percent of a political party's contributors, in certain states, would result in extensive deprivations of that party's constitutional rights, especially if the interviews were fraught with threats and intimidation. Clearly, the tactics perhaps acceptable in an FBI field investigation of a criminal suspect, are entirely inappropriate for an FEC field agent.

The legislative history of the FEC demonstrates that Congress was worried about this problem. The FEC,

which is aware of its own legislative history, made a conscious determination to disregard that legislative concern. In so doing it exceeded its statutory powers. The Court below erred in granting Summary Judgment to Defendants on this count.

Congressional intent was demonstrated in the colloquy between U.S. Senator Montoya and the then Chairman of the FEC, Thomas Curtis, during public hearings in 1976:

> Senator Montoya: "You (FEC) go into a small community about some matter and your person flashes a badge that he represents the FEC, and is collecting information relative to certain matters, and the whole community is going to know that that candidate is being investigated for something. That is unfair."
>
> Mr. Curtis: "That is what I am saying we don't do."

(Senate Hearings Before the Committee on Appropriations, 94th Congress, 2nd Session, at 2613 (1976)).

Not only have Defendants at bar done just what Chairman Curtis denied was in their power, but did so on a scale and in a manner which was plainly calculated to be unlawful, arbitrary, capricious, and violative of Plaintiffs' constitutional rights.

The Circuit Court erred in finding that Defendants' actions were in good faith and statutorily permissable. Defendants have presented only seven affidavits. Defendants' affidavits are self-serving, conclusory statements that they acted in good faith, and are entirely controverted by Plaintiffs' affidavits. The good faith argument is a defense which must be proved by Defendants at trial. Plaintiffs

should not be denied the opportunity to prove otherwise or to cross-examine the Defendants through discovery and at trial.

A plain reading of the statutory authority of the FEC demonstrates that the FEC is clearly without authority to conduct field investigations in the manner complained of by Plaintiffs. Such surprise visits are *ultra vires* and are *per se* unreasonable. The powers of the FEC are delineated in 2 U.S.C. Section 437(d), which in pertinent part provides:

> (a) The Commission has the power—
>
> > (1) to require, by special or general orders, any person to submit *in writing* such reports and answers to questions as the Commission may prescribe; and such submission shall be made within such a *reasonable time* and under oath or otherwise as the Commission may determine; . . .
> >
> > (3) to require *by subpoena, signed by the chairman or the vice-chairman*, the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties.
>
> (Emphasis added.)

In the instant case, the FEC decided to forego the use of these two statutory procedures. If the FEC had issued orders or subpoenas, then those served would have had an opportunity to move to quash, note objections, and seek advice of counsel.

Furthermore, the action taken by Defendants was not signed by either the Chairman or Vice-Chairman of the FEC. In fact, Defendants supplied no direct statement that the Chairman or Vice-Chairman reviewed or approved of the actions. The only statement is that of

Margaret Chaney, a Compliance Secretary who states in her affidavit that the 24-hour memo issued by the Commission staff was sent to the offices of the Commissioners and returned within 24 hours with no statements or written comments.

It is incredible that the FEC believes it can authorize a sweeping field investigation, its *only* such investigation of a minor party, encompassing dozens of contributors, by such non-action, when the statute specifically requires that individual subpoenas must be signed by the Chairman or Vice-Chairman.

The Administrative Procedure Act, 5 U.S.C. 555(c), requires that no federal government inspection or other investigative act can be made except as authorized by law:

> inspection, or other investigative act or demand may not be issued, made, or enforced except as authorized by law. A person compelled to submit data or evidence is entitled to retain . . . a copy . . . thereof.

The procedure used by the FEC is an investigative act that is not authorized by law, and should therefore be declared illegal.

The District Court noted that:

> the matters complained of are not the sort of matters which fall within the primary jurisdiction of the agency.

Nonetheless the District Court was "persuaded" that "the FEC's authorization of the investigation" and the "subsequent actions of the FEC field agents . . . were reasonable and within the statutory authority conferred by 2 U.S.C. 437(d) and 438." (Appendix, p. 40a et seq.). It is simply the fact that this conclusion has no basis either in the FEC's statutory authority or in its legislative history. It was an error for the District Court to reach this conclusion. The Circuit Court did not "pause long" (Slip

Opinion at page 13) in affirming this abusive, selective, and constitutionally insensitive procedure as being proper and statutorily acceptable despite Chairman Curtis' disavowal. Plaintiffs have not found, nor have Defendants offered, anything that would indicate that Congress ever intended that the FEC could send its agents out on surprise visits to contact and harass individual contributors who have *no* reporting obligation with the FEC, but yet are subject to criminal and civil penalties for answers they are coerced into giving.

Apparently the defendants could not find any trace of legislative history either to justify their particular actions, but drew the strange conclusion, argued to the District Court, that:

> Absent such history, we submit that nothing suggests that the Congress intended to take the extraordinarily unusual process of limiting the Commission to compulsory process.

It appears that Defendants wish to develop a perverted version of the well established principle of *expressio unius est exclusio alterius* into "if the law doesn't say that we can't do it, let's do it anyway." Admittedly the FEC has broad investigatory authority or jurisdiction but the methods and procedures for carrying out that authority have been spelled out very clearly by Congress in 2 U.S.C. 437(d), cited above.

NOT ONLY IS THERE NO STATUTORY AUTHORITY FOR THE CONDUCT OF THE DEFENDANTS, BUT THE FEC ITSELF HAS NO INTERNAL GUIDELINES, REGULATIONS, OR PROCEDURES FOR PERSONAL CONTACTING OF CONTRIBUTORS

At the very least, one would suspect that even if the FEC actually believed, prior to its campaign against

Plaintiffs, that they had the power to conduct surprise visits, they would certainly have had some type of internal regulation, guideline or other document on the subject. No documents or guidelines were produced by Defendants during the proceedings before the District Court on this subject because no such document or guidelines exist. It is incredible that the only guidelines given to field investigators is the command to "GO VERIFY CONTRIBUTIONS." Any guidance as to what questions should be asked, whether conversations should be prefaced with the warning that the contributor need not answer anything, and other orderly procedures are totally lacking in this case.

Plaintiffs' counsel requested and received from the FEC under the Freedom of Information Act all documents specifying procedures that are used for verifying matching funds, all of which were before the Circuit Court. The information the FEC supplied contains no reference whatsoever concerning the procedures to be used for personal contacting of contributors. In fact, the only documents which refer to field investigations concern the contacting of reporting entities such as committees and candidates. In those cases the FEC has voluminous and detailed procedures concerning the proper scope and conduct of the investigations or audit. Plaintiffs suggest that this comparative lack of any internal procedures for contacting individuals is *prima facie* evidence of bad faith on the part of the Defendants. How can they claim any good faith whey they recognize the need for instructions on conducting certain investigations of *organizations*, but have *no* procedures or guidelines regarding "blitz" style approaches to unsophisticated individual contributors at their homes and workplaces? Some of the more eager investigators even managed to get some of the Plaintiffs to sign statements. This is admitted in the Defendants' affidavits. However, none of these agents gave a copy of this statement to the person as required by 5 U.S.C. 555(c).

CONGRESS HAS EXPRESSLY PROVIDED THE COMMISSION WITH ENUMERATED POWERS WHICH HAVE BEEN IGNORED BY THE FEC

As noted above, the investigative powers of the FEC are found in 2 U.S.C. 437(d). Plaintiffs see nothing "extraordinarily unusual" (to use Defendants' own phrase) in requiring an agency and its employees to follow the law. If anything, Defendants' actions against Plaintiffs in this case are "extraordinarily unusual." Particularly when First Amendment rights are concerned, a regulatory agency should not be permitted to simply bypass orderly procedure and due process in carrying out its mission.

In their moving papers, Defendants correctly noted:

> plaintiffs' action seems to be an attempt . . . to have this court decide questions *ordinarily* arising in subpoena enforcement proceedings." (Emphasis added.) Slip Opinion at page 35.

This is exactly the point! The reasons that the questions raised in the instant case *ordinarily* arise in subpoena enforcement proceedings is because regulatory agencies *ordinarily* issue general or special orders and subpoenas when they are investigating. The FEC's investigative activities and techniques should be especially scrutinized since the subject matter regulated is fundamental rights of speech and association, rather than simple commercial activity.

If the statutory language suggests anything, it is that Congress intended the Commission be cautious in using its investigative powers. For example, unlike most regulatory statutes which do not specify who must sign an administrative summons in order for it to issue, the Congress limited such power at the FEC to only two persons—the Chairman or Vice-Chairman of the FEC, 2 U.S.C. 437(d)(3). Again, Defendants are obviously confused as to the distinction between the scope of their authority, and the procedures to be used for implementing

or exercising that authority. The use of a "24 hour Memo" to set off a sweeping field investigation of the scope complained of by Plaintiffs is unconstitutional and beyond the scope of the FEC's authority.

Defendants have suggested that Plaintiffs should not be permitted to object to Defendants' investigative procedures until such time as the FEC decides to file a civil action against Plaintiffs in federal court (Slip Opinion at page 36). Defendants are simply arguing that they should be permitted to continue violating Plaintiffs' constitutional rights until such time as the FEC may decide to file a civil action. Plaintiffs would be effectively precluded from bringing a civil rights action for deprivations of their constitutional rights. This formulation has been rejected with respect to every other federal agency. *Bivens v Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

The colloquy quoted above between Senator Montoya and then FEC Chairman Thomas Curtis indicates that field investigations of any type are considered unfair and certainly are not encouraged. In a 1974 report prepared by Orlando D. Potter, Staff Director of the FEC, for the Secretary of the Senate concerning old section 308(a) of the 1971 Act, it states that:

> the field investigation process should be reserved as a final step to clarify ambiguities and identify apparent violations after *every* effort has been made to secure disclosure. (Emphasis added).
>
> *Report on Audits, Field Investigations, Complaints and Referrals in Connection with Elections for the U.S. Senate in 1972*, p. 4 (1974).

Plaintiffs concede that the above references do not refer to verification of matching funds; but since the legislative history is bare on this point, any such references to the investigative process is helpful. Indeed, since it appears that "field investigation" is the exception rather than the

rule with respect to reporting entities, all the more so should they be curtailed with respect to individual, uncounseled contributors who are not obliged to report to the FEC, but who are subject to possible criminal and civil penalties. See *NAACP v Alabama* and *Doe v Martin*, *supra*.

There is simply no statutory basis for the conduct of the FEC. Under Chapter 96 of the FEC for matching funds, the only auditing authority of the FEC is found in 26 U.S.C. 9038. That section only permits the FEC to audit *after* the candidate receives matching funds. There is no mention of auditing or verifying contributions from contributors, whether before *or* after such funds are received. The only statutory authority which remotely grants the FEC authority is the last phrase of 2 U.S.C. 438(a)(8):

> . . . and to give priority to auditing and field investigating of the verification for, and the receipt and use of any payment *received* by a candidate under Chapter 95 or Chapter 96 of the Internal Revenue Code of 1954. (Emphasis added.)

This excerpt from Title 2 did *not* appear in the 1974 amendments but was added by the 1976 amendments to the Act.

The emphasis in the amendment is on the "priority" to be given in investigating. In other words, this amendment does not grant any new extension of authority that was not present under the 1974 amendments, but merely directs the FEC to give priority to its auditing under Chapter 95 and 96. As has already been noted, the auditing under Chapter 96 is only permissible *after* the candidate receives money and that has been the practice in *all* other cases before the FEC. It is not inconsistent for the FEC to conduct "verification for . . . payments received," under Section 438(a)(8); and it is a matter of public record that such action was taken in the case of presidential candidate Milton Shapp.

In short, the actions taken by the FEC against Plaintiff are unprecedented. Even if the FEC has jurisdiction and authority, the FEC has not justified its ignoring of the investigative tools specifically granted to it by Congress.

CONCLUSION

The Court should grant Certiorari in this case.

Respectfully submitted,

David S. Heller
Attorney for Petitioners
~~Plaintiffs-Appellants~~
304 West 58th Street
New York, New York 10019
(212) 247-7488

APPENDIX

APPENDIX A

Provisions of the United States Code

2 U.S.C. 437(d). Powers of Commission.

(a)The Commission has the power—

(1) to require, by special or general orders, any person to submit in writing such reports and answers to questions as the Commission may prescribe; and such submission shall be made within such a reasonable period of time and under oath or otherwise as the Commission may determine;

(2) to administer oaths or affirmations;

(3) to require by subpoena, signed by the chairman or the vice chairman, the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties;

(4) in any proceeding or investigation, to order testimony to be taken by deposition before any person who is designated by the Commission and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection;

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States;

(6) to initiate (through civil actions for injunctive, declaratory, or other appropriate relief), defend (in the case of any civil action brought under section 313(a) (9)), or appeal any civil action in the name of the Commission for the purpose of enforcing the provisions of this Act and chapter 95 and chapter 96 of the Internal Revenue Code of 1954, through its general counsel;

(7) to render advisory opinions under section 312 of this title;

(8) to develop such prescribed forms and to make, amend, and repeal such rules, pursuant to the provisions of chapter 5 of Title 5, United States Code, as are necessary to carry out the provisions of this Act and

chapter 95 and chapter 96 of the Internal Revenue Code of 1954;

(9) to formulate general policy with respect to the administration of this Act and chapter 95 and chapter 96 of the Internal Revenue Code of 1954; and

(10) to conduct investigations and hearings expeditiously, to encourage voluntary compliance, and to report apparent violations to the appropriate law enforcement authorities.

(b) Any United States district court within the jurisdiction of which any inquiry is carried on, may, upon petition by the Commission, in case of refusal to obey a subpoena or order of the Commission issued under subsection (a) of this section, issue an order requiring compliance therewith. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(c) No person shall be subject to civil liability to any person (other than the Commission or the United States) for disclosing information at the request of the Commission.

(d) (1) Whenever the Commission submits any budget estimate or request to the President of the United States or the Office of Management and Budget, it shall concurrently transmit a copy of such estimate or request to the Congress.

(2) Whenever the Commission submits any legislative recommendations, or testimony, or comments on legislation, requested by the Congress or by any Member of the Congress, to the President of the United States or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress or to the Member requesting the same. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, testimony, or comments on legislation, to any office or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

(e) Except as provided in section 313(a)(9), the power

of the Commission to initiate civil actions under subsection (a)(6) shall be the exclusive civil remedy for the enforcement of the provisions of this Act.

2 U.S.C. Section 438. Administrative provisions.

(a) Federal Election Commission; duties

It shall be the duty of the Commission—

(1) Forms

to develop and furnish to the person required by the provisions of this Act prescribed forms for the making of the reports and statements required to be filed with it under this subchapter;

(2) Manual for uniform bookkeeping and reporting methods

to prepare, publish, and furnish to the person required to file such reports and statements a manual setting forth recommended uniform methods of bookkeeping and reporting;

(3) Filing, coding, and cross-indexing system

to develop a filing, coding, and cross-indexing system consonant with the purposes of this subchapter;

(4) Public inspection; copies; sale or use restrictions

to make the reports and statements filed with it available for public inspection and copying, commencing as soon as practicable but not later than the end of the second day following the day during which it was received, and to permit copying of any such report or statement by hand or by duplicating machine, as requested by any person, at the expense of such person: *Provided,* That any information copied from such reports and statements shall not be sold or utilized by any person for the purpose of soliciting contributions or for any commercial purpose;

(5) Preservation of reports and statements

to preserve such reports and statements for a period of ten years from date of receipt, except that reports and statements relating solely to candidates for the House of Representatives shall be preserved for only five years from the date of receipt;

(6) Indices of reports and statements; publication in Federal Register

to compile and maintain a cumulative index of reports and statements filed with it, which shall be published in the Federal Register at regular intervals and which shall be available for purchase directly or by mail for a reasonable price, and to compile and maintain a separate cumulative index of reports and statements filed with it by political committees supporting more than one candidate, which shall include a listing of the date of the registration of any such political committee and the date upon which any such political committee qualifies to make expenditures under section 441a(a)(2) of this title, and which shall be revised on the same basis and at the same time as the other cumulative indices required under this paragraph;

(7) Special reports; publication

to prepare and publish from time to time special reports listing those candidates for whom reports were filed as required by this subchapter and those candidates for whom such reports were not filed as so required;

(8) Audits; investigations; priority audits and investigations

to make from time to time audits and field investigations with respect to reports and statements filed under the provisions of this subchapter, and with respect to alleged failures to file any report or statement required under the provisions of this subchapter, and to give priority to auditing and field investigating of the verification for, and the receipt and use of, any payments received by a candidate under chapter 95 or chapter 96 of title 26;

(9) Enforcement authorities; reports of violations

to report apparent violations of law to the appropriate law enforcement authorities; and

(10) Rules and regulations

to prescribe suitable rules and regulations to carry out the provisions of this subchapter, in accordance

with the provisions of subsection (c) of this section.

5 U.S.C. Section 555. Ancillary matters.

(a) This section applies, according to the provisions thereof, except as otherwise provided by this subchapter.

(c) Process, requirement of a report, inspection, or other investigative act or demand may not be issued, made, or enforced except as authorized by law. A person compelled to submit data or evidence is entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

28 U.S.C. Section 9033. Eligibility for payments.

(a) *Conditions.* To be eligible to receive payments under section 9037, a candidate shall, in writing—

(1) agree to obtain and furnish to the Commission any evidence it may request of qualified campaign expenses;

(2) agree to keep and furnish to the Commission any records; books, and other information it may request; and

(3) agree to an audit and examination by the Commission under section 9038 and to pay any amounts required to be paid under such section.

(b)

Expense limitation; declaration of intent; minimum contributions. To be eligible to receive payments under section 9037, a candidate shall certify to the Commission that—

(1) the candidate and his authorized committees will not incur qualified campaign expenses in excess of the limitations on such expenses under section 9035;

(2) the candidate is seeking nomination by a political party for election to the office of President of the United States;

(3) the candidate has received matching contributions which in the aggregate, exceed $5,000 in contribu-

tions from residents of each of at least 20 States; and

(4) the aggregate of contributions certified with respect to any person under paragraph (3) does not exceed $250.

28 U.S.C. Section 9038. Examinations and audits; repayments.

(a) *Examinations and audits.* After each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under section 9037.

(b) *Repayments.*

(1) If the Commission determines that any portion of the payments made to a candidate from the matching payment account was in excess of the aggregate amount of payments to which such candidate was entitled under section 9034, it shall notify the candidate, and the candidate shall pay to the Secretary an amount equal to the amount of excess payments.

(2) If the Commission determines that any amount of any payment made to a candidate from the matching payment account was used for any purpose other than—

(A) to defray the qualified campaign expenses with respect to which such payment was made; or

(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray qualified campaign expenses; it shall notify such candidate of the amount so used, and the candidate shall pay to the Secretary an amount equal to such amount.

(3) Amounts received by a candidate from the matching payment account may be retained for the liquidation of all obligations to pay qualified campaign expenses incurred for a period not exceeding 6 months after the end of the matching payment period. After all obligations have been liquidated, that portion of any unexpended balance remaining in the candidate's accounts which bears the same ratio to the total unexpended

balance as the total amount received from the matching payment account bears to the total of all deposits made into the candidate's accounts shall be promptly repaid to the matching payment account.

(c) *Notification.* No notification shall be made by the Commission under subsection (b) with respect to a matching payment period more than 3 years after the end of such period.

(d) *Deposit of repayments.* All payments received by the Secretary under subsection (b) shall be deposited by him in the matching payment account.

MEMORANDUM AND ORDER OF THE COURT, DATED OCTOBER 25, 1977

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LeROY B. JONES, et al.,

Plaintiffs

v. *Civil Action 77-0732*

UNKNOWN AGENTS OF THE FEDERAL ELECTION COMMISSION, et al.,

Defendants

[FILED OCT 26 1977 JAMES F. DAVEY, CLERK]

MEMORANDUM

This is an action brought by and for certain persons who made contributions to the United States Labor Party and the Committee to Elect Lyndon LaRouche ("CTEL"), seeking to enjoin field investigative activities by agents of the Federal Election Committee ("FEC") and to recover money damages for alleged violations of a variety of common law and constitutional rights.[1] The matter is before the Court on Defendants' motion to dismiss or in the alternative for summary judgment and Plaintiffs' motion for preliminary relief. After careful review of the entire record herein and for the reasons discussed below, this Court finds that there are no genuine issues of material fact and that Defendants are entitled to judgment as a matter of law.

1. Plaintiffs allege, inter alia, that FEC agents infringed Plaintiffs' rights under the First, Fourth, Fifth and Sixth Amendments, violated Plaintiffs' rights to privacy, caused the intentional infliction of mental and emotional distress, and violated the terms of the Helsinki Agreement on Human Rights.

In October 1976, Lyndon LaRouche and the CTEL submitted a request to the FEC for matching fund payments pursuant to the Presidential Primary Matching Payment Account Act ("PPMPAA"), 26 U.S.C. §9031, et seq. In November 1976, the FEC authorized an investigation for the purpose of verifying claimed contributions. Part of that investigation involved personal interviews of listed contributors by FEC field agents. [During the last week of January 1977, six FEC agents individually contacted listed contributors in three states. It is this field activity and the manner in which it was conducted which Plaintiffs attack.] On February 10, 1977, the FEC decided not to certify LaRouche's request for matching funds.[2]

At the outset, the Court is satisfied that it possesses the requisite subject matter jurisdiction to entertain this suit. The issues raised relate not so much to the FEC's activities pursuant to the PPMPAA[3] as to the FEC's general powers under the Federal Election Campaigns Act, as amended, 2 U.S.C. §431, *et seq.* Further, the matters complained of are not the sort of matters which fall within the primary jurisdiction of the agency.

However, the Court is persuaded that the FEC's authorization of investigations of claimed contributions to

2. A petition is pending before the United States Court of Appeals for the District of Columbia to review the actions of the FEC in connection with its denial of LaRouche's request for matching fund payments. See No. 77-1184, filed on February 14, 1977, by some of the plaintiffs herein. The instant action was brought on April 28, 1977.

3. Such matters are cognizable solely before the United Court of Appeals, per 26 U.S.C. §9041.

the presidential election campaign of Lyndon LaRouche and the subsequent actions of the FEC field agents at issue in this lawsuit were reasonable and within the statutory authority conferred by 2 U.S.C. §§437d and 438. In addition, the Court finds nothing in the record which supports or which could support any alleged violation of Plaintiffs' common law, statutory or constitutional rights. Judgment for Defendants is therefore appropriate.

/s/Aubrey E. Robinson
AUBREY E. ROBINSON
United States District
Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LeROY B. JONES, et al.,

Plaintiffs

v. *Civil Action 77-0732*

UNKNOWN AGENTS OF THE FEDERAL ELECTION COMMISSION, et al.,

Defendants

[FILED OCT. 26, 1977 JAMES F. DAVEY, CLERK]

ORDER

In accordance with the Memorandum filed herewith, it is by the Court this 26th day of October, 1977,

ORDERED, that Plaintiffs' Motion for Preliminary Injunction be and it is hereby DENIED; and it is

FURTHER ORDERED, that Defendants' Motion for Summary Judgment be and it is hereby GRANTED, and judgment shall be entered for Defendants herein.

/s/Aubrey E. Robinson
AUBREY E. ROBINSON
Judge

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 77-2093

LE ROY B. JONES, ET AL., APPELLANTS

v.

UNKNOWN AGENTS OF THE FEDERAL ELECTION COMMISSION, ET AL., APPELLEES

Appeal from the United States District Court for the District of Columbia

(D.C. Civil Action No. 77-0732)

Argued September 27, 1978

Decided August 23, 1979

David S. Heller, a member of the bar of the Supreme Court of Wisconsin, *pro hac vice*, by special leave of the court, with whom *Joel D. Joseph* was on the brief, for appellants.

Charles N. Steele, Associate General Counsel and *Barbara Van Gelder*, Attorney, Federal Election Commission, with whom *William C. Oldaker*, General Counsel, Federal Election Commission, *Barbara Allen Babcock*, Assistant Attorney General and *Leonard Schaitman*, Attorney, Department of Justice, were on the brief, for appellees.

Before MCGOWAN and TAMM, *Circuit Judges*, and JUNE L. GREEN,* *District Judge*.

Opinion for the court filed by *Circuit Judge* MCGOWAN.

MCGOWAN, *Circuit Judge*: This is an appeal from an order of the District Court dismissing a suit in which appellants—the United States Labor Party (USLP), the Committee to Elect Lyndon La Rouche (CTEL), and ten individuals who contributed to CTEL in 1976 (individual appellants)—sought damages and injunctive relief against appellees, the Federal Election Commission (Commission) and various members of its staff.[1] The suit was filed after the Commission concluded, on the basis of field interviews with CTEL contributors (including nine of the ten individual appellants), that Lyndon La Rouche, a candidate for the 1976 Presidential nomination of the USLP, had not raised the requisite amount of contributions to qualify for matching funds under the Presidential

---

* Of the United States District Court for the District of Columbia, sitting by designation pursuant to 28 U.S.C. § 292 (a) (1976).

[1] This appeal was consolidated for purposes of oral argument with Committee to Elect Lyndon La Rouche v. Federal Election Commission, No. 77-1184, and Federal Election Commission v. Committee to Elect Lyndon La Rouche, et al., No. 77-1987, decided this date.

References herein to the appendix in the instant case are designated as "A." In addition, references herein to the petitioners' appendix and supplemental appendix in No. 77-1184 are designated as "P.A." and "S.A." respectively.

Primary Matching Payment Account Act (Act), 26 U.S.C. §§ 9031-9042 (1976).

In the District Court, appellants asserted numerous constitutional, statutory, and common law claims arising out of both (1) the fact that the Commission conducted field interviews at all, and (2) the manner in which the interviews were conducted and the scope of the questions asked. The District Court, finding merit in none of these claims, denied injunctive relief and granted appellees' motion for summary judgment.

On appeal, appellants renew their allegations, with particular emphasis on their statutory, first amendment, and fourth amendment claims. Our task is to determine whether, on a reading of the record most favorable to appellants, appellees were entitled to a judgment as a matter of law. For reasons stated below, we conclude that the District Court erred in granting summary judgment with regard to (1) appellants' statutory claim that the Commission is not empowered to inquire during field interviews into issues bearing no relation at all to the subject matter of an otherwise legitimate investigation into a candidate's eligibility to receive primary matching funds, and (2) appellant Jones' fourth amendment claim that he was subjected to a warrantless seizure of certain financial documents and bank records. In all other respects, we affirm the decision under review.

I

On October 14, 1976, Lyndon La Rouche wrote the Commission requesting primary matching funds for his campaign for the USLP Presidential nomination. One of the eligibility requirements for such funds is that a candidate "certify" that he has received in excess of $5000 in contributions of $250 or less in each of at least 20 states. 26 U.S.C. § 9033(b)(3)-(4) (1976). For these purposes, the Act defines the term "contribution" as a "gift

of money made by a written instrument which identifies the person making the contribution by full name and mailing address." *Id.* § 9034(a). La Rouche, in support of his application, submitted a notarized statement that he had raised the requisite amount, but provided no documentation of his contributions. Pursuant to inquiries by the Commission staff, CTEL, La Rouche's principal campaign committee, later submitted a computer printout listing contributions in excess of the threshold. But, once again, the Commission received no underlying documentation of the contributions.

On November 4, 1976, the Commission authorized its staff to conduct a field audit in order to verify La Rouche's eligibility for matching funds. That audit, which took place shortly thereafter at CTEL's headquarters in New York City, revealed that CTEL had in its possession written instruments evidencing campaign contributions in excess of the threshold amount in 18 states and that, with the submission as promised of certain additional documentation, it would soon cross the threshold in two more states, Connecticut and Indiana. But, in addition to this soon to be corrected shortfall, the audit uncovered many instances where contributions made by money order or cashier's checks raised substantial questions as to whether the contributions were in fact made by residents of the states indicated.[2]

---

[2] For example, the documentation of the contributions to La Rouche's campaign revealed that many of the money orders and cashier's checks were given in patterns that raised substantial statutory questions. Examples are set forth below:

(1) The following money orders were all drawn from the Bowery Savings Bank in New York City:

Serial numbers	Date	State Submitted
4-114337	10/15/76	Massachusetts
4-114338	10/15/76	Colorado

[Continued]

The audit also revealed a pattern of heavy last-minute contributions from persons listing their occupation as that of "volunteer coordinator" for the National Caucus of Labor Committees (NCLC), an organization that, during the last two weeks of the eligibility period, received payments from CTEL of more than $310,000.[3] It further indicated that CTEL shared office space and common personnel with NCLC and three other organizations (New Solidarity International Press Service, Inc., Campaigner Publications, Inc., and the United States Labor Party) and that those organizations accounted for 78% of

[2] [Continued]

Serial numbers	Date	State Submitted
4-114339	10/15/76	Massachusetts
4-114341	10/15/76	North Carolina
4-114342	10/14/76	Delaware
4-114343	10/15/76	Massachusetts
8-obliterated	10/08/76	Connecticut
8-060756	10/12/76	Colorado
8-063400 (or 409)	10/13/76	Indiana
8-063407	10/13/76	Massachusetts
8-063408	8/01/76	North Carolina
8-06341 (?)	10/08/76	Colorado

(2) The following cashier's checks were all drawn from the Pacific National Bank of Washington:

2255209	9/28/76	Washington
2255210	9/28/76	Washington
2255217	9/29/76	Oregon
2255218	9/29/76	Oregon
2255219	9/29/76	Oregon
2255220	9/29/76	Oregon
2652293	10/05/76	Washington
2652294	?	Oregon

[3] The audit indicated that NCLC volunteer coordinators, who contributed 16% of the total contributions received, accounted for as much 83.2% of the contributions received during October.

CTEL's expenditures and 97% of its debt. These findings seemed particularly significant in light of the fact that CTEL had surpassed the $5,000 threshold by only a narrow margin in at least several states.

On the basis of these findings, the Commission staff recommended, by memorandum of December 27, 1976, that the audit be expanded to include the four organizations closely related to CTEL and that individual CTEL contributors be interviewed to verify their contributions. The memorandum was initialed by, among others, defendants Potter; Steele, and Stoltz. At its meeting on December 29, 1976, the Commission voted to expand the audit to include the related organizations.

On January 13, 1977, the staff indicated by memorandum to the Commission that, absent objection, it was prepared to begin confirming contributions by means of field interviews with CTEL contributors. This memorandum was initialed by defendants Costa, Potter, Oldaker, Steele, and Stoltz. On January 14, 1977, after five Commissioners had returned the memorandum and the sixth had not objected, the Secretary of the Commission certified that the staff recommendation had been adopted. The Commission staff, on January 21, 1977, notified CTEL that its contributors soon would be approached for direct verification of their contributions.

During the week of January 26, 1977, six of the Commission's agents—including defendants Allen, Dougherty, Sims, Vance, and Yowell[4]—either did, or attempted to, interview listed contributors (including the ten individual appellants)[5] in three states, Delaware, Massa-

[4] One of the Commission agents conducting the investigation, Charles Hanshaw, was not named in the complaint.

[5] It appears that only nine of the ten individual appellants were in fact approached. Although the complaint alleges that the tenth individual appellant, Philip Valenti, was interro-

chusetts, and Wisconsin. They obtained the names and addresses of these individuals from the information CTEL had submitted in support of La Rouche's application for primary matching funds. In six cases (appellants Ford, Wayne and Nancy Hintz, Jones, Mazaris, and Toppin), the individuals received personal visits at their homes; in one case (appellant Park), the interviewee was visited at his place of work; and in two cases (appellants Chaplin and Dallas), the interviews were by telephone. Three appellants, Chaplin, Nancy Hintz, and Park, stated that they did not wish to talk, and the agents desisted.

One appellant who spoke at some length during his interview was Le Roy Jones. That interview, according to Jones,[a] proceeded as follows: Shortly after 7:45 on

---

gated by two Commission agents of his home, A. 8, appellee Vance states, by affidavit, that he attempted to interview Valenti, but was unable to do so. A. 47-48. Appellant Valenti has not submitted an affidavit in response. In the present posture of this case, we must give precedence to appellee's affidavit over appellants' bare allegations. *See* FED. R. CIV. P. 56(e).

[a] This account, which appears in Jones' affidavit, differs markedly from Vance's account. The same interview is described in Vance's affidavit as follows:

> At approximately 8:00 a.m. on January 26, 1977, Mr. Hanshaw and I [Vance] visited the home of LeRoy Jones, at 4 Brandywine Boulevard, Wilmington, Delaware. We asked Mr. Jones if he could produce cancelled checks and bank records to verify his contributions, and to permit the FEC to review certain of his checking accounts by signing voluntary release of liability authorizations. Mr. Jones answered our questions and requests without objection. During the interview, Mr. Jones appeared friendly and volunteered information we had not requested. We attempted to question Mrs. Jones, but Mr. Jones interrupted to correct her, and we abandoned the attempt. Prior to our departure, I gave my business card to Mrs. Jones and requested her to contact me should any

the morning of January 26, 1977, Jones was awakened by his wife who indicated that she had just answered a knock at their door and that two agents of the Commission wanted to speak with him. Jones went downstairs. One of the agents, who identified himself as Vance and produced his Commission identification badge, asked Jones how much money he had contributed to CTEL and wanted to know the source of the funds.

Jones apparently indicated that he had given at least some money to CTEL, for Vance then asked to see the cancelled checks and inquired when they had been written. When Jones responded that he did not think that he had either bit of information on hand, Vance replied in "an extremely threatening tone" that:

> If you don't give me the exact information I asked for you cpuld [*sic*] get sentenced up to 10 years in jail and be given a $10,000 fine . . . you've got a nice house here, you wouldn't want to lose it would you?

A. 30-31. Thereafter, Jones, upon searching his records for thirty minutes, turned over to Vance his tax returns and a cancelled check documenting a contribution to CTEL.

Vance is then said to have asked Jones numerous questions about his political affiliations and beliefs, but Jones does not allege that he responded. The questioning next turned to how the USLP raised its money and who its contributors were, and Jones answered these questions to the best of his ability. Then Vance, once again stating

---

> additional information relevant to our inquiry occur to her.

A. 46. For purposes of reviewing the grant of summary judgment against appellants, we must read conflicting affidavits in a light most favorable to appellants' position. Accordingly, at this juncture, we must assume that the interview took place as Jones has described it.

the possible sanctions if Jones refused, asked Jones to reveal the bank account numbers of Jones' personal account and that of the USLP and further "demanded" Jones to sign a statement permitting the agents to inspect his bank records. Jones, "in great fear," signed the statements. Finally, Vance questioned Jones in some detail regarding his activities in the USLP and who paid his expenses, though again Jones does not allege that he responded.

At 9:15 A.M., Vance and his partner departed, leaving behind a business card in case Jones or his wife wanted to change their story. Both Jones and his wife, it is asserted, "felt thoroughly intimidated and in fear of loss of security and property were [they] not to comply with Mr. Vance's questions." A. 32. In fact, as a result of the tension experienced during the interview, Jones, a 59-year-old retiree who had had more than twelve heart attacks, later made a special visit to his doctor. During that visit, the doctor took an electrocardiagram for precaution and changed Jones' prescription.[7]

The results of the field interviews revealed that in neither Delaware nor Wisconsin had La Rouche raised the threshold amount of $5000 or more in contributions of $250 or less. Thus, even though CTEL had submitted, on February 2, 1977, documentation that according to the initial audit would have established La Rouche's compliance with the threshold in the last of twenty states, the Commission, on February 10, 1977, rejected La

[7] We describe in detail the interview with Jones because it contains the most comprehensive array of the questions that allegedly were asked during the field interviews of CTEL contributors. Throughout this opinion, we will refer only to Jones' interview except where the affidavits of other CTEL contributors contain facts bearing on appellants' claims that do not appear in Jones' affidavit.

Rouche's application for primary matching funds on the ground that he had not met the fundraising threshold of section 9033(b)(3)-(4). It is that determination that we today affirm in No. 77-1184.

On April 28, 1977, appellants filed this action in the District Court, seeking various forms of declaratory and injunctive relief and damages.[8] The complaint named as defendants the Commission and ten individuals, including the five staff members who initialed the memorandum seeking authorization for the field interviews and five of the six investigators who conducted the interviews. The complaint also named as defendants "unknown agents of the Federal Election Commission."[9] Appellants' principal allegations were that the field interviews of CTEL contributors were unauthorized by statute and violative of the first and fourth amendments.[10]

Before the District Court had taken any action in the instant case, the Commission, upon reviewing both the results of the inquiry into La Rouche's eligibility for matching funds and various reports of contributions and expenditures required to be filed with the Commission pur-

[8] The complaint denominated the suit as a "class action," stating that the "class" included "all contributors" to CTEL in Delaware, Wisconsin, and Massachusetts who were interviewed by Commission investigators. A. 3-5. There is nothing in the record, however, to indicate that appellants took the necessary steps to have the class certified. *See* Local Rule 1-13(a)(b).

[9] It appears that the only agent involved who was not named in the complaint was Charles Hanshaw. *See* note 4 *supra*.

[10] Appellants also asserted claims under the fifth, sixth, and ninth amendments and the Final Act of the Conference on Security and Cooperation in Europe (the "Helsinki Agreement"), as well as a claim for intentional infliction of emotional distress.

suant to 2 U.S.C. § 434, determined that there was reason to believe that the USLP, CTEL, and the other related organizations had violated certain provisions of the federal elections laws in connection with the La Rouche campaign. The Commission by letter notified each organization that it was under investigation and explained the suspected statutory violations. The letter to CTEL indicated that, *inter alia*, there was reason to believe the CTEL had violated 26 U.S.C. Section 9042 (c) (1) by making false statements in its submissions for matching funds. In furtherance of the Commission's investigation into this matter, agents of the Commission began, on or before July 14, 1977, interviewing additional CTEL contributors in the state of Indiana to verify their contributions to the La Rouche campaign.

On June 24, 1977, appellants moved for a temporary restraining order and, in the alternative, for a preliminary injunction, seeking to enjoin the Commission from conducting further personal interviews with contributors to CTEL as part of its continued investigation. The District Court denied appellants' motion.

On July 18, 1977, appellees moved to dismiss the complaint and, in the alternative, for summary judgment. The grounds for this motion were, *inter alia*, that the field interviews were within the Commission's statutory authority and that appellants had failed to state a claim against the individual appellees upon which relief could be granted. Appellees also argued that, in any event, they were individually immune from suit.

On October 25, 1977, the District Court granted the appellees' motion for summary judgment and denied appellants' motion for a preliminary injunction. The District Court found that the actions of the Commission were "reasonable and within the [Commission's] statutory authority." It further concluded that "nothing in the record . . . supports or . . . could support any alleged

violation of Plaintiffs' common law, statutory or constitutional rights." [11]

II

The principal claims for injunctive and monetary relief that we must resolve are appellants' challenges on statutory, first amendment, and fourth amendment grounds to the field interviews conducted both before and after the Commission refused to certify La Rouche's eligibility to receive primary matching funds.[12] Many of the statutory claims, at least those addressed to the fact that the Commission conducted any interviewing at all of CTEL contributors during the certification process, are analyzed, and rejected, in our opinion in No. 77-1184. There we held (1) that section 9036(a) of the Act, when read in conjunction with section 9039(b), permits the Commission to conduct field interviews as part of its task of certifying a candidate's eligibility to receive primary matching funds where the candidate's threshold submission contains patent irregularities suggesting the possibility of fraud,[13] (2) that such irregularities were present in the case of La Rouche's application for matching funds,[14] and (3) that the manner by which the Commission authorized the interviewing of CTEL contributors was procedurally sound.[15] It is unnecessary to

---

[11] Neither the District Court, nor we, reach the question of appellees' official immunity from suit.

[12] With regard to appellants' other common law, statutory, and constitutional claims, *see* note 10 *supra*, we conclude, upon careful examination of the record, that the District Court was correct in dismissing these claims for want of any record support.

[13] Committee to Elect Lyndon La Rouche v. Federal Election Commission, No. 77-1184, slip op. at 18-22 (D.C. Cir. August 23, 1979).

[14] *Id.* at 28-30.

[15] *Id.* at 29 n.22.

repeat here the reasoning underlying our decision in No. 77-1184.

Nor need we pause long on appellants' statutory claim that the Commission is without authority to conduct field interviews of individual contributors in connection with an investigation into whether a candidate's principal campaign committee has violated 26 U.S.C. § 9042(c)(1) by making false statements in its matching funds submissions. Section 437g(a)(2) of the Federal Election Campaign Act provides that

> [i]f the Commission, on the basis of information ascertained in the normal course of carrying out its supervisory responsibilities, has reason to believe that . . . a violation [of the Act] has occurred, [it] shall notify the person involved of such alleged violation and shall *make an investigation of such alleged violation.* . . .

2 U.S.C. § 437(g)(a)(2) (1976) (emphasis added). Although section 437(g)(a)(2) does not contain an express grant of authority to conduct field interviews, we hold, as we did in No. 77-1184, that such authority is implicit in the Commission's power to "make an investigation of such alleged violation."[16] It is our view, moreover, that the Commission properly invoked that authority here inasmuch as it had more than ample reason to believe, based on information ascertained during the normal course of carrying out its responsibilities under section 9036(a) of ensuring La Rouche's eligibility to receive matching funds, that false statements had been

[16] *Id.* at 19 n.16 (statutory authority to conduct field interviews under the Presidential Primary Matching Payments Act is implicit in Commission's express authority under 26 U.S.C. § 9039(b) "to conduct examinations and audits . . . [and] to conduct investigations . . . which it determines to be necessary to carry out its responsibilities under this chapter").

made to the Commission in connection with La Rouche's matching funds submissions.

The statutory and constitutional claims that remain deal not with the fact that the field interviews were conducted at all, but rather with the manner in which the interviews were conducted and the scope of the questions asked. Appellants' statutory claim is that even if the Commission has authority to conduct field interviews, it exceeded that authority here when its agents inquired into matters bearing no relation whatsoever to the Commission's investigations. With regard to the first amendment, appellants argue that their right to political association was impermissibly "chilled" as a result of the number of interviews conducted, the manner in which they were conducted, and the scope of questioning during the interviews. Finally, appellants assert that the agents of the Commission, in gaining entry into the homes of the individual appellants and access to their financial records, violated the fourth amendment guarantee against unreasonable searches and seizures.

Our task here is to determine whether the District Court properly granted appellees' motion for summary judgment on these claims. In so doing, we must assure ourselves that, on a reading of the record most favorable to appellants, appellees were entitled to judgment as a matter of law.

A.

Appellants' statutory claim is that even if the field interviews of CTEL contributors were lawfully authorized, the scope of the questions asked by Commission agents during those interviews exceeded the Commission's statutory mandate. It is asserted that much of the questioning had little or no relevance to the purpose of the Commission's investigations, namely, to verify contributions to CTEL. For example, appellant Jones alleges he was asked questions not only about his CTEL

sions of subsection (c), to conduct examinations and audits (in addition to the examinations and audits required by section 9038(a)), *to conduct investigations*, and to require the keeping and submission of any books, records, and information, *which it determines to be necessary to carry out its responsibilities under this chapter.*

26 U.S.C. § 9039(b) (1976) (emphasis added). But section 9039(b) is not a plenary grant of such power, for it authorizes only those investigative acts the Commission deems "necessary to carry out its responsibilities under this chapter." It thus requires that an investigation bear some possible relation to the Commission's responsibilities under the Act.

If this requirement is to have any meaning, we think it must apply not only to the authorization vel non of Commission investigations, but also to the scope of such investigations. It would be anomalous indeed if the Act were interpreted so as to permit the Commission to inquire into matters exhibiting no relevance at all to the Commission's responsibilities simply because these inquiries were part of an otherwise lawful investigation. Accordingly, we construe section 9039(b) to permit the Commission to inquire during its investigations only into those matters bearing at least some possible relation to the Commission's responsibilities under the Act.

Inasmuch as we already determined in No. 77-1184 that the initial set of field interviews of CTEL contributors were lawfully authorized pursuant to the Commission's statutory obligation to ensure La Rouche's eligibility for primary matching funds, we need only decide here whether the questions both admittedly and allegedly asked during those interviews have some possible bearing on the Commission's responsibilities under the Act. Many of the questions that the agents admit having asked, such as whether an individual contributed at all to CTEL,

contributions, but also about his political beliefs and affiliations as well as his activities in the USLP. Thus, we are urged to conclude that the Commission's statutory mandate imposes some limits on the scope of questioning during an otherwise lawful field interview and that the Commission exceeded those limits here.

Appellees do not argue that the Commission is vested with unbounded authority to inquire into any matters, however irrelevant, during the course of an otherwise lawful field interview. Instead, appellees assert, on the facts presented here, that both sets of field interviews were conducted pursuant to the legitimate purpose of verifying individual contributions reportedly made to CTEL and that all questions asked during the field interviews were "relevant and material" to that purpose. It is appellees' position, therefore, that they are entitled, as the District Court held, to judgment as a matter of law.

We turn first to appellants' claims arising out of the field interviews conducted by the Commission in determining whether to certify La Rouche's eligibility to receive primary matching funds. In this regard, we must determine whether section 9038(b), the source of the Commission's authority to conduct field interviews under the Act, imposes any limits on the scope of questioning during an otherwise lawful field interview, and, if so, whether, on a reading of the record most favorable to appellants, the Commission exceeded those limits here.

It is our view that with regard to the scope of questioning during an otherwise lawful field interview, the Commission's authority under section 9039(b) is broad, but not limitless. Section 9039(b) is, by its own terms, a broad grant of investigative power:

(b) The Commission is authorized to prescribe rules and regulations in accordance with the provi-

how much he contributed, and what the source of his money was, all have a direct bearing on whether the individual in fact contributed, and contributed his own money, to La Rouche's campaign.[17] These matters fall plainly within the Commission's obligation under section 9036(a) to verify that a candidate has in fact met the fundraising threshold for obtaining primary matching funds where, as in La Rouche's case, the candidate's threshold submission contains patent irregularities suggesting the possibility of fraud.

This same statutory obligation, we think, also justifies, on the facts presented here, a variety of questions allegedly asked concerning the individual appellants' affiliations, activities, and financial relationships with CTEL, NCLC, and the USLP. The Commission, in processing La Rouche's application for primary matching funds, was confronted with the specter of fraud on the part of individuals associated with CTEL and several related organizations. The Commission's audit of the contributions to CTEL revealed both that numerous last-minute contributions made by cashier's check or money order were given in patterns that raised substantial questions as to whether the contributor in fact resided in the state indicated, *see* note 2 *supra*, and that individuals who listed their occupation as that of volunteer coordinator for NCLC contributed a high percentage of the funds received by CTEL during the last two weeks of the eligibility period.

During the course of the audit, the Commission also learned that NCLC received over $300,000 from CTEL

[17] We include in this category of questions the agents' requests both for cancelled checks or other documentation of contributions and for access to bank records. Such information, if provided, would have permitted the Commission verify CTEL's documentation of the contributions to La Rouche's campaign.

during the last two weeks of the eligibility period, that CTEL shared office space and common personnel with NCLC and three other organizations (including the USLP), and that those organizations accounted for 78% of CTEL's expenditures and 97% of its debt. Given this combination of warning signals, we cannot say that the Commission was unjustified in exploring the possibilities of foul play by individuals associated with CTEL and the related organizations. Thus, in light of the facts available to the Commission, and given its obligations under section 9036(a), we see no statutory bar to inquiries such as whether an individual belonged to, organized with, or received funds from CTEL, NCLC, and the USLP, for such inquiries have a direct bearing on the pattern of irregularities and statutory questions raised by the initial audit.[18]

The only other questions that allegedly were asked during the first set of interviews are the inquiries into the political beliefs of the individual appellants.[19] Here we think that appellees were not entitled to summary judgment, for we fail to see any possible relation, however tenuous, between the alleged inquiries and the Commission's responsibilities under the Act. Although the individual appellants' political affiliations with, and organizational ties to, the USLP, CTEL, and NCLC might well have had some bearing on La Rouche's threshold eligibility (given the "warning signals" discussed above), it is hard for us to imagine how their political beliefs

[18] For the same reasons, we find that the questions allegedly asked about the financing of CTEL, NCLC and the USLP also fall within the Commission's investigative mandate.

[19] There are two such allegations in the affidavits: (1) appellant Jones asserts that he was asked "numerous questions as to [his] political . . . beliefs," A. 31, and (2) appellant Toppin alleges that during his interview Commission agents "demanded to know if [he] shared the Labor Party's beliefs," A. 104.

would have any bearing whatsoever on La Rouche's eligibility for matching funds or any other responsibility of the Commission under the Act. Accordingly, at least with regard to the alleged inquiries into the political beliefs of the individual appellants occurring during the first set of interviews, we hold that the District Court erred in granting appellees' motion for summary judgment. It is our view that if those inquiries in fact occurred, the Commission exceeded its otherwise broad investigative mandate under section 9039(b).[20]

We turn now to appellants' statutory claim arising out of the second set of interviews, namely, that the scope of the questions allegedly asked during the interviews conducted by the Commission as part of its investigation under 2 U.S.C. section 437 (g)(a)(2) into whether false statements had been made in connection with La Rouche's application for matching funds exceeded the Commission's statutory mandate. This claim is, we think, so totally lacking in record support that we need not even decide the precise extent to which section 437 (g)(a)(2) restricts the scope of questioning during an otherwise lawful field interview. The only affidavit in the record filed by a contributor who was approached during the second set of interviews is that of David Hoagland. A. 33-34. By his own account, Hoagland asserts only that the Commission agents asked him if he knew what the Commission represented and, when he

[20] It appears that the appropriate remedy, if any, in the event that appellants establish on remand that those alleged inquiries in fact occurred is injunctive relief. The Act contains no provision for money damages on a claim that the Commission has exceeded its investigative powers. Similarly, although the Administrative Procedure Act permits any person aggrieved to have set aside agency action deemed "in excess of statutory jurisdiction," it does not create a right to money damages when such action has occurred. *See* 5 U.S.C. § 706(2)(C) (1976).

responded that he did, if he would be willing to examine some documents. After Hoagland refused this request, the agents ended the interview. Inasmuch as we see nothing in Hoagland's affidavit or anywhere else in the record that even remotely suggests that the Commission asked questions that exceeded the scope of the Commission's authority under section 437(g)(a)(2), we affirm that portion of the District Court's opinion granting summary judgment on appellants' statutory claim based on the second set of interviews.

B.

Appellants also argue that the field interviews, even to the extent authorized by statute, were violative of the first amendment. In this regard, appellants assert that the number of interviews conducted, the manner in which they were conducted, and the scope of questioning during those interviews could have had no foreseeable result other than to chill appellants' right to political association. In response, appellees argue that we must weigh appellants' associational rights against the substantial governmental interests served by conducting the field interviews. In light of the governmental interests involved, we are urged to conclude that, absent any factual showing of harassment against the individual appellants, CTEL, or the USLP, the mere asking of material questions by Commission agents does not rise to the level of a first amendment violation.

It is well settled that political speech is afforded the broadest possible protection under the first amendment. This reflects both our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open," *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964), and the fact that "[d]iscussion of public issues and debate on the qualifications of candidates are integral to the operation of

the system of government established by our Constitution," *Buckley v. Valeo*, 424 U.S. 1, 14 (1976). Moreover, inasmuch as "[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association," *NAACP v. Alabama*, 357 U.S. 449, 460 (1958), the first amendment has been held to protect not only political expression, but also political association.

Nor is this right to political association limited only to protection against direct infringements on associational interests. In a line of cases[21] begining with *NAACP v. Alabama*, *id.*, the Supreme Court has held that the compelled disclosure of an individual's affiliation with an organization may, standing alone, constitute a serious intrusion on the first amendment right to privacy of association and belief. These cases share the premise that, especially where, as in *NAACP v. Alabama*, an organization can demonstrate a pattern of harassment resulting from prior revelations of its membership, anonymity of membership is often essential for the viability of a dissident or unpopular group. In the same vein, the Supreme Court in *Buckley v. Valeo*, *supra*, held that the right to political association is implicated in the compelled disclosure not only of organizational ties, but also of campaign contributions. The *Buckley* Court reasoned that the right to pool money through contributions falls within the ambit of first amendment protection, because "funds are often essential if 'advocacy' is to be truly or optimally 'effective,'" and because "financial transactions can reveal much about a person's activities, associations and beliefs." 424 U.S. at 65-66.

---

[21] Gibson v. Florida Legislative Comm., 372 U.S. 539 (1963); NAACP v. Button, 371 U.S. 415 (1963); Shelton v. Tucker, 364 U.S. 479 (1960); Bates v. Little Rock, 361 U.S. 516 (1960); NAACP v. Alabama, *supra*.

The "compelled disclosure" cases from *NAACP v. Alabama* through *Buckley v. Valeo* recognize that, under certain circumstances, an individual's right to privacy of association may give way to a sufficiently compelling governmental interest for requiring disclosure. Those circumstances are, to be sure, limited, for the governmental interest must (1) survive "exacting scrutiny" and (2) bear "a 'relevant correlation' or 'substantial relation' [to] the information required to be disclosed." *Buckley v. Valeo*, *supra*, 424 U.S. at 64. But such a showing can be made. In *Buckley*, for example, where minor parties challenged the provisions of the Federal Election Campaign Act requiring *inter alia* the disclosure of campaign contributions in excess of $100,[22] the Court found three sufficiently compelling governmental interests to uphold the disclosure provisions. Those interests were (1) to provide voters with information regarding a candidate's supporters so as to assist the electorate in evaluating the candidate, *id.* at 66-67, (2) to "deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity," *id* at 67, and (3) to enhance the Government's ability to detect violations of the contribution limitations in the Federal Election Campaign Act. *Id.* at 66-68. In the absence of record evidence of harassment of the sort proffered in *NAACP v. Alabama*, the Court in *Buckley* concluded that the governmental interests in disclosure outweighed the associational interests of the minor parties.

Applying the analysis of the "compelled disclosure" cases to the facts at hand, we have no difficulty concluding that the field interviews of CTEL contributors served governmental interests sufficiently compelling to survive "exacting scrutiny." Two sorts of governmental interests are involved. First, insofar as the interviewing

---

[22] 2 U.S.C. § 431 *et seq.* (1976).

of CTEL contributors was conducted to ensure that La Rouche had met the fundraising threshold for primary matching funds, the field interviews obviously served the same interests as those underlying the fundraising threshold itself. Those interests, as the Court in *Buckley* noted, are (1) "Congress' interest in not funding hopeless candidates with large sums of public money," and (2) "the important public interest against providing artificial incentives to 'splintered parties and unrestrained factionalism.'" 424 U.S. at 96.

Second, insofar as the interviewing of CTEL contributors was prompted by a finding of possible fraud in connection with reported contributions to the La Rouche campaign, the field interviews also serve the governmental interests underlying all the provisions of the Federal Election Campaign Act that would be undermined if a candidate or his authorized committee were maintaining records of fraudulent campaign contributions.[23] On such provision is the disclosure requirement upheld in *Buckley*, for it would hardly serve the purposes of that requirement if the disclosures made in response to it were in fact fraudulent. To do so would not assist, but rather mislead, the electorate in evaluating a candidate in terms of his financial supporters. Thus, inasmuch as the governmental interests served by the disclosure requirement, standing alone, withstood "exacting scrutiny" in *Buckley*, it follows *a fortiori* that where, as here, those same interests are combined with the interests underlying the threshold requirement, the governmental interests served

[23] In this regard, we note that the results of the field interviews led not only to the rejection of La Rouche's application for matching funds, but also to a broader investigation into possible violations of the federal election laws in connection with the La Rouche campaign. *See* Federal Election Commission v. Committee to Elect Lyndon La Rouche, No. 77-1987 (D.C. Cir. August 23, 1979).

by the field interviews are sufficiently compelling to withstand "exacting scrutiny."

It also appears that, with two exceptions not of decisional significance,[24] there was "a 'relevant correlation'" between the governmental interests and the information required to be disclosed. As we concluded above,[25] the questions admittedly asked concerning the amount, source, and date of the individual appellants' contributions to CTEL had a direct bearing on whether the individuals in fact contributed to CTEL, and thus on

[24] The exceptions are the allegations of appellants Jones and Toppin that, during their interviews, they were asked questions about their political beliefs. *See* note 19 *supra*. We have already held that, absent any possible relation to the Commission's responsibilities under the Act, such questioning, if it in fact occurred, would be in excess of the Commission's otherwise broad investigative mandate under section 9039(b). Accordingly, appellants may be entitled to injunctive relief against questioning of this sort.

But we do not feel that such questioning states a claim upon which relief can be granted in a suit for money damages under the first amendment. It is clear that compelled disclosures may in certain instances rise to the level of a first amendment violation, *see* NAACP v. Alabama, *supra*, and that the remedy for money damages as in *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971), applies to first amendment violations, *see* Dellums v. Powell, 566 F.2d 167 (D.C. Cir. 1977), *cert. denied*, 438 U.S. 916 (1978). Nonetheless, where, as here, there are no allegations that appellants Jones or Toppin answered the questions about their political beliefs, that any sanctions whatsoever were taken against them for their refusal to so answer, that the mere asking of the specific questions at issue chilled their associational rights, or that any of the appellants in this case had been subject to prior harassment by the Commission, we simply cannot say that the District Court erred in concluding that appellees were entitled to judgment as a matter of law on this *Bivens* claim.

[25] *See* pages 17-18 *supra*.

whether La Rouche met the fundraising threshold.[26] It was also our view that those questions allegedly asked concerning the individual appellants' affiliations, activities, and financial relationships with CTEL, NCLC, and the USLP were related directly to the pattern of irregularities and statutory questions raised by the initial audit.[27] *Compare Pollard v. Roberts*, 283 F. Supp. 248 (E.D. Ark.) (three-judge court), *aff'd per curiam* 393 U.S. 14 (1968). Accordingly, we find a sufficient nexus between the governmental interests underlying the field interviews and the questions allegedly asked during those interviews.

Notwithstanding the substantial governmental interests involved and the direct relation between those interests and the information disclosed, appellants urge us to conclude that in light of the minor party status of the USLP, the field interviews of CTEL contributors amounted to an undue infringement on appellants' associational rights. Appellants do not argue that their status as a minor party diminishes the significance of the governmental interests served by the field interviews. They assert instead that the membership of a minor party is more susceptible to a chilling effect on associational rights than the membership of a major party.

The unique vulnerability of minor parties and their members to infringements on associational rights was recognized in *Buckley v. Valeo*, where the Court noted:

> We are not unmindful that the damage done by disclosure to the associational interests of the minor parties and their members and to supporters of inde-

[26] Moreover, we note that many of these questions involved nothing more than verification of information already available to the public under the disclosure provisions of the Federal Election Campaign Act, 2 U.S.C. § 431 *et seq.* (1976).

[27] *See* pages 16-18 *supra*.

> pendents could be significant. These movements are less likely to have a sound financial base and thus are more vulnerable to fall-offs in contributions. In some instances fears of reprisal may deter contributions to the point where the movement cannot survive.

424 U.S. at 71. But even so, the Court in *Buckley* held that, absent a showing of the sort made in *NAACP v. Alabama*—where an organization had "made an uncontroverted showing that on past occasions revelation of the identity of its rank-and-file members [had] exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility," 357 U.S. at 462—the governmental interests underlying the disclosure provisions of the Federal Election Campaign Act were sufficiently compelling to outweigh the possible harm to the associational rights of minor parties and their members.

Appellants assert that they have been subjected to harassment of the sort present in *NAACP v. Alabama*. In particular, they point both to the number of field interviews conducted and the manner in which they were conducted. It is their view that "such activities conducted on a massive scale could have no foreseeable result other than the chilling of a political party's constitutional rights."

Although the field interviews of CTEL contributors no doubt had some chilling effect on their support of CTEL and the USLP, we disagree that this is a case comparable to *NAACP v. Alabama*. The record in this case is devoid of any evidence of a pattern of past or present governmental harassment against the USLP, CTEL, or their members, for the only alleged harassment is that stemming from the two sets of field interviews in connection with La Rouche's application for matching funds.

The first set of field interviews was initiated by the Commission after it discovered patent irregularities suggesting the possibility of fraud among the reported contributions to the La Rouche campaign, thereby triggering the Commission's obligation under section 9036(a) to ensure that La Rouche had in fact raised the threshold amount to qualify for primary matching funds.[28] The second set of interviews followed from the Commission's determination, on the basis of information ascertained in the normal course of carrying out its supervisory responsibilities under section 9036(a), that there was reason to believe that, in contravention of 26 U.S.C. § 9042(c)(1)(A), false statements had been filed in connection with La Rouche's threshold submission. Section 437g(a)(2) *requires* the Commission, once having made such a determination, to conduct an investigation into the alleged violation.[29] Both investigations thus were lawful agency responses to findings of possible fraud in connection with the reported contributions to the La Rouche campaign.

Nor do we find a pattern of harassment in the fact that the Commission initially did, or attempted to, interview as many as 60 CTEL contributors in three states and later as many as 40 more in another state. Given the Commission's findings of possible fraud, we see nothing unreasonable about its attempting to interview, as an initial matter, approximately 20 CTEL contributors in each of three representative states. Moreover, in light of the fact that many of those contributors were never located, we think it was reasonable for the Commission, as part of its section 437(g)(a)(2) investigation, to expand the interviewing to include 40 more contributors in another state.

---

[28] *See* notes 13-14 and accompanying text *supra*.

[29] *See* page 13 *supra*.

With regard to the manner in which the field interviews were conducted, many of the individual appellants allege that they were harassed or intimidated by the Commission agents. It is our view, however, that the vast majority of the individual appellants fail to allege facts sufficient to suggest that this "chill" amounted to anything more than the natural response that anyone would have if questioned by a federal agent about campaign contributions.[30] The record as a whole, we think, suggests that the field interviews were conducted pursuant to reasonable investigative procedures.[31] Insofar as the Commission needed a prompt verification of CTEL contributions so as to expedite La Rouche's certification decision, we cannot say that the Commission acted unreasonably during the first set of interviews in not providing the individual appellants with notice of their interviews, in approaching some of the individual appellants at their homes before they left for work in the morning, and others later in the day at their workplaces. The record, moreover, is devoid of any specific allegations of unreasonable investigative practices in connec-

---

[30] No individual appellant, other than appellant Jones, has alleged specific facts sufficient to suggest the possibility of harassment. *See* pages 30-31 *infra*. It is our view, however, that a single allegation of harassment is insufficient to bring an entire case within the ambit of *NAACP v. Alabama*.

[31] In this regard, our appellate function would surely have been aided if the Commission had promulgated rules governing the direct interviewing of contributors. It also seems especially appropriate for the Commission to adopt such rules in light of the potential chilling effect on associational rights that arises whenever Commission agents descend on a community to verify individual contributions. Thus, although we do not attach decisional significance to the absence of such rules at the time the CTEL interviews were conducted, we were pleased to learn at oral argument that the Commission was then in the process of establishing guidelines for conducting field interviews.

tion with the second set of interviews. Thus, even on a reading of the record most favorable to appellants, we think that the Commission was not engaged in an effort to harass the USLP, CTEL, or their members, but rather in a bona fide effort to verify contributions to La Rouche's campaign in the face of possible fraud.

On the record before us, we conclude that the governmental interests served by the field interviews were sufficiently compelling to outweigh appellants' associational interests. It is significant, we think, that the record reveals that the only confrontations between appellants and the Commission arose in response to a finding of possible fraud in connection with the reported contributions to the La Rouche campaign. Although field interviews such as those that allegedly occurred here undoubtedly may discourage some political association, we cannot say here that this "chill" states a constitutional claim. Accordingly, we hold that, with regard to appellants' first amendment claim, that District Court properly granted appellees' motion for summary judgment.

C.

Appellants' final claim is that the agents of the Commission, in gaining entry to the homes of the individual appellants and access to their financial records, conducted warrantless searches and seizures violative of the fourth amendment. Several individual appellants assert that they were interviewed "without [their] consent," and still others claim that they were "compelled" to turn over financial documents, sign statements, and disclose bank records. In response, appellees urge us to conclude that inasmuch as the record is devoid of any nonconclusory allegations that the Commission agents used force or coercion, the field interviews must be deemed to fall within the "consent" exception to the warrant requirement.

One of the well established exceptions to the fourth amendment rule that a search conducted without a warrant issued upon probable cause is "*per se* unreasonable," *Katz v. United States*, 389 U.S. 347, 357 (1967), is a search "conducted pursuant to consent," *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973). *Accord*, *Davis v. United States*, 328 U.S. 582 (1946); *Zap v. United States*, 328 U.S. 624 (1946). A consent to search is, of course, valid only if it "was in fact voluntarily given, and not the result of duress or coercion, express or implied." *Schneckloth v. Bustamonte*, *supra*, 412 U.S. at 248. In this regard, the Supreme Court, following its decisions under the fourteenth amendment involving the voluntariness of confessions, has held that the issue of whether a consent to search was voluntarily given is a question of fact to be determined from the totality of circumstances in a particular case. *Id.* 223-29.

Upon examination of the affidavits filed below, we find that, except in the case of appellant Jones, the individual appellants have not alleged facts sufficient to support their claim that the field interviews were nonconsensual. The only facts alleged by the individual appellants other than Jones to explain how it was that they were coerced into being interviewed are the rather conclusory assertions of the interviewees that they felt "intimidated" by the Commission agents. A. 29, 105, 107. They do not allege, nor is there anything in the record to suggest, that the agents used force or threats to gain entry into the homes of these interviewees, to induce them to respond to the agents' questions, or to compel them to sign statements or turn over financial information.

The most serious allegation other than that of appellant Jones appears in the affidavit of appellant Toppin who asserts that he was "intimidated" because the agents "were belligerent, and because throughout the interroga-

tion the agents were continually misquoting statements [he] had previously made, and trying to get [him] to agree to their reformulation and distortion of [his] previous statements." A. 105. It is our view, however, that even appellant Toppin's allegation, when viewed as it must be in the totality of circumstances, falls short of that necessary to demonstrate that his interview was not voluntarily given, but rather was the result of duress or coercion. *See Davis v. United States*, 328 U.S. 582 (1946). Accordingly, we affirm that portion of the District Court's opinion dismissing the fourth amendment claims relating to the field interviews of the individual appellants other than appellant Jones.

We reach a different conclusion, however, with regard to appellant Jones. In his affidavit, Jones, a 59-year-old retiree due to a serious heart condition, asserts that the following exchange occurred during his interview with agent Vance: After Jones indicated that he had made contributions to CTEL, Vance asked to see the cancelled checks and inquired when they had been written. When Jones responded that he did not think he had either bit of information on hand, Vance replied in "an extremely threatening tone" that:

> If you don't give me the exact information I asked for you cpuld [*sic*] get sentenced up to 10 years in jail and be given a $10,000 fine . . . you've got a nice house here, you wouldn't want to lose it would you?

A. 30-31. Thereafter, Jones, upon searching his records for thirty minutes, turned over to Vance his tax returns and a cancelled check documenting a contribution to CTEL.

Later in the interview, Vance is said to have asked Jones to reveal the bank account numbers of Jones' personal account and that of the USLP and further "de-

manded" Jones to sign a statement permitting the agents to inspect his bank records. When Vance reiterated the possible sanctions if Jones refused, Jones, "in great fear," signed the statements. Throughout the interview, according to Jones, both he and his wife "felt thoroughly intimidated and in fear of loss of security and property were [they] not to comply with Mr. Vance's questions." A.32.

It is our view that if the interview occurred as Jones has described it, Jones cannot be said to have voluntarily consented to what was otherwise a warrantless seizure of his financial documents and bank records. This conclusion follows, we think, from the case of *Bumper v. North Carolina*, 391 U.S. 543 (1968), which was discussed approvingly in the Supreme Court's leading case on consent searches, *Schneckloth v. Bustamonte*, *supra*, 412 U.S. at 222-23. In *Bumper*, four law enforcement officers were permitted by a 66-year-old widow to search her home after they informed her that they had a warrant but neither showed her the warrant nor read it to her. At a pretrial motion to suppress evidence discovered during the search of the widow's home, the prosecution relied not on the validity of the warrant, but rather upon the widow's consent to the search. The trial court admitted the evidence on that basis, and its decision was affirmed by the Supreme Court of North Carolina.

The Supreme Court, however, reversed the conviction on the ground that "[w]hen a law enforcement officer claims authority to search a home under a warrant, he announces in effect that the occupant has no right to resist the search. The situation is instinct with coercion—albeit colorably lawful coercion. Where there is coercion there cannot be consent." 391 U.S. at 550.

Similarly, where, as we must assume for purposes of this appeal happened here, a Commission agent informs a contributor that if the contributor refuses to turn over

financial documents, he could "get sentenced up to 10 years in jail and be given a $10,000 fine," the agent announces in effect that the contributor has no right to resist the seizure of the documents.[32] Accordingly, the situation here, as in *Bumper*, is instinct with coercion, and where there is coercion there cannot be consent. In fact, the coercion here is even greater than in *Bumper*, for Jones was told in effect not only that he had no right to refuse, but also that, if he did refuse, he would be subject to a substantial loss of liberty and property.

For the foregoing reasons, we think that Jones has alleged facts that, if true, demonstrate that he did not consent to the warrantless seizure of his financial docu-

---

[32] The alleged statement of agent Vance that Jones' refusal to provide the documentation Vance had requested could result in a ten-year jail sentence and a $10,000 fine apparently refers to 26 U.S.C. § 9042(c) (1976), which provides in relevant part:

> (1) It is unlawful for any person knowingly and willfully—
>
> . . . .
>
> (B) to fail to furnish to the Commission any records, books, or information requested by it for purposes of this chapter.
>
> (2) Any person who violates the provisions of paragraph (1) shall be fined not more than $10,000, or imprisoned not more than 5 years, or both.

Although the plain language of section 9042(c) appears to suggest that Jones would have been subject to sanctions similar to those Vance allegedly mentioned, we see formidable constitutional objections to the applicability of section 9042(c) to a situation where an individual contributor who is under no reporting obligation under the Act and who has not been served with a subpoena or search warrant refuses to turn over financial document or to provide access to his bank records. *See* Marshall v. Barlow's, Inc., 436 U.S. 307 (1978); Camara v. Municipal Court, 387 U.S. 523 (1967); See v. City of Seattle, 387 U.S. 541 (1967).

ments and bank records. Thus, we hold that with regard to the alleged seizure of those documents and records, the District Court erred in granting appellees' motion for summary judgment on the ground that "nothing in the record . . . supports or could support any alleged violation of plaintiffs' . . . constitutional rights."

III

It is our view, in sum, that the District Court erred in granting summary judgment with regard to (1) appellants' statutory claim that the Commission is not empowered to inquire during field interviews into issues bearing no relation at all to the subject matter of an otherwise legitimate investigation into a candidate's eligibility to receive primary matching funds, and (2) appellant Jones' fourth amendment claim that he was subjected to a warrantless seizure of certain financial documents and bank records. In all other respects, we affirm the decision under review.

It is so ordered.

PLAINTIFFS' COMPLAINT, DATED APRIL 28, 1977

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 77-0732

LE ROY B. JONES
4 Brandywine Blvd.
Wilmington, Delaware

and

NANCY GULLO MAZARIS
3404 Donald Place
Claymont, Delaware

and

WILLIAM TOPPIN
103 Chesterfield Road
New Castle, Delaware

and

BARBARA DALLAS
6019 W. Custer Ave.
Milwaukee, Wisconsin

and

WAYNE HINTZ
3109 N. 38th Street
Milwaukee, Wisconsin

and

NANCY LEE HINTZ
3109 N. 38th Street
Milwaukee, Wisconsin

and

PHILIP VALENTI
714 Appletree Court
Claymont, Delaware

and

SUSAN CHAPLIN
127 King Street
Dorchester, Massachusetts

and

CHARLES PARK
31 North Monroe Terrace
Dorchester, Massachusetts

and

THEO FORD
6019 West Custer Ave.
Milwaukee, Wisconsin

and

COMMITTEE TO ELECT LYNDON LA ROUCHE
231 West 29th St.
New York, New York 10001

and

LYNDON LA ROUCHE
231 West 29th St.
New York, New York 10001

and

UNITED STATES LABOR PARTY
231 West 29th St.
New York, New York 10001

Plaintiffs

v.

UNKNOWN AGENTS OF THE FEDERAL ELECTION COMMISSION

and

FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

and

WILLIAM YOWELL

and

ROBERT DOUGHERTY

and

PEGGY SIMS

and

ORLANDO B. POTTER

and

WILLIAM OLDAKER

and

ROBERT COSTA

and

JOSEPH STOLTZ

and

CHARLES STEELE

and

KEITH VANCE

and

ELMO ALLEN

Defendants

COMPLAINT FOR DECLARATORY, INJUNCTIVE, COMPENSATORY AND PUNITIVE RELIEF

I
PRELIMINARY STATEMENT

1. This is a class action brought by the representative parties to recover damages and to enjoin and declare illegal and unconstitutional the actions of the defendants. The Federal Election Commission and its agents and employees have subjected plaintiffs to illegal and unconstitutional searches, seizures, threats, harassment, and interference with the free exercise of constitutionally protected rights of speech, assembly and association. The actions of the defendants are violative of plaintiffs' first, fourth, fifth, sixth, and ninth amendment rights under the United States Constitution and are arbitrary, capricious, an abuse of discretion, otherwise contrary to law.

II
JURISDICTION

2. Jurisdiction is conferred on this Court by 28 U.S.C. Sections 1331, 1332, 1343, 1346, 1361 and by 5 U.S.C. Sections 701-706.

3. The amount in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, for each member of the class.

III
PLAINTIFFS

4. The individual plaintiffs are citizens of the United States and are residents of Wisconsin, Massachusetts and Delaware. All of these individual plaintiffs were contacted by employees and agents of the Federal Election Commission regarding contributions that they made to the Committee to Elect Lyndon LaRouche (CTEL) and the United States Labor Party (USLP or Labor Party).

Lyndon LaRouche was the presidential candidate of the United States Labor Party in 1976 and is a resident of the State of New York.

5. The Committee to Elect Lyndon LaRouche (CTEL) is a political committee and is located in the State of New York.

6. The United States Labor Party is a political party (USLP) with its principal headquarters in the State of New York.

7. This is a class action brought by plaintiffs on their own behalf and on behalf of others similarly situated, pursuant to Rule 23(a) and 23(b) (2), Federal Rules of Civil Procedure. The class represented by plaintiffs consists of all contributors to CTEL and USLP who reside in Delaware, Massachusetts and Wisconsin and who were contacted by employees or agents of the Federal Election Commission during the month of January, 1977.

The class consists of approximately sixty (60) persons who were contacted by the Federal Election Commission and is so numerous that joinder of all members is impracticable. Further, there are questions of law or fact common to the class, the claims of the representative parties are typical of the claims of the class, and the representative parties will fairly and adequately protect the interests of the class.

IV
DEFENDANTS

8. The unknown agents of the Federal Election Commission are all agents and employees of the Federal Election Commission who participated in the illegal and unconstitutional actions alleged in this complaint. When the names of these individuals become known to plaintiffs joinder will be sought.

9. The Federal Election Commission was established by 2 U.S.C. Section 437c and its powers are enumerated at 2 U.S.C. Section 437d. The only office of the FEC is in Washington, D.C.

10. The named individual defendants were employees or agents of the Federal Election Commission at relevant times.

All these individuals are residents of the District of Columbia, Maryland or Virginia. These individuals are sued in both their official and individual capacities.

V
FACTUAL ALLEGATIONS

11. On January 13, 1977 Defendants Stoltz, Steele, Potter, Oldaker and Costa issued a memorandum, purportedly circulated to Commissioners of the Federal Election Commission. A copy of this memorandum is attached to the complaint as Exhibit A. The memorandum proposed that contributors to CTEL be personally contacted. The memorandum states that if the Commission raises no objection within 24 hours that the staff will proceed on its own.

12. The Federal Election Commission (FEC or Commission) did not raise an objection to the memorandum described in paragraph 11.

13. At about 7:45 on the morning of January 26, 1977 two men knocked on the door to 4 Brandywine Blvd. in Wilmington, Delaware, the home of plaintiff Le Roy Jones.

14. Mr. Jones was awoken by his wife who had gone to the door to see who was knocking. Mr. Jones then went to the door and found two men from the Federal Election Commission. One of the two men identified himself as Keith Vance. The other agent of the FEC is unknown at this time. Both agents entered Mr. Jones's home without his consent.

15. Mr. Vance asked Mr. Jones how much money he had given to CTEL and where he got the money from. Mr. Vance asked to see proof of his answers including cancelled checks.

16. Mr. Jones responded that he did not have the exact information at hand.

17. Mr. Vance then threatened Mr. Jones and said that Mr. Jones could get sentenced up to ten years in jail and be fined $10,000 and stated that you have a nice house here and you (Mr. Jones) would not want to lose it, would you? Mr. Vance said this in a very threatening tone.

18. In fear of a possible jail term or fine, Mr. Jones went upstairs with his wife and searched for one-half hour for receipts. Mr. Jones found his tax returns and a cancelled check made to CTEL. He showed these items to Mr. Vance.

19. Mr. Vance asked Mr. Jones if all his contributions were made by check and wanted to know the banks that these checks were drawn on. Mr. Jones answered to the best of his ability.

20. Mr. Vance asked numerous questions concerning Mr. Jones's political affiliations and beliefs. He asked for details about the structure and organization of the Labor Party.

21. Mr. Vance asked Mr. Jones for all his personal bank account numbers and all Labor Party bank account numbers and demanded that Mr. and Mrs. Jones sign statements permitting the FEC to inspect their personal bank accounts. Mr. Vance threatened with reprisals if the Jones' did not sign.

22. In great fear Mr. Jones signed the statements described in paragraph 21. Mr. Vance did not give Mr. Jones a receipt for the statement or a copy of the statement.

23. Mr. Vance did not provide Mr. and Mrs. Jones with a warning that the information that they provided might have been used against them in a criminal or civil proceeding. Neither agent explained the purpose of their visit. No advance notice whatsoever was given to Mr. or Mrs. Jones of this intrusion.

24. Mr. and Mrs. Jones felt intimidated and in fear of loss of liberty and property because of Mr. Vance's actions.

25. As a direct and proximate result of the FEC's agents' actions, Mr. Jones made an extraordinary visit to

his doctor. The doctor took an electro-cardiogram and prescribed medication. Mr. Jones has a heart condition and has suffered more than 12 heart attacks. Mr. Jones is 63 years old and is retired because of his poor health.

26. Mr. Vance and his companion from the FEC entered the home of plaintiff William Toppin in New Castle, Delaware on January 26, 1977 without Mr. Toppin's consent.

27. The two agents told Mr. Toppin that he might have to go to Washington, D.C. to testify at FEC hearings.

28. The agents asked many questions concerning Mr. Toppin's contributions to CTEL and the source of his contributions. They asked many questions concerning his contributions to USLP, whether the contributions were by personal or cashier's check and so forth. Mr. Toppin felt intimidated and fearful under questioning.

29. The agents wanted to know if Mr. Toppin owned the house in which he was living. They demanded to know Mr. Toppin's political affiliation and beliefs.

30. The agents compelled Mr. Toppin to sign a statement concerning his contributions to CTEL and USLP.

31. At about 1:00 p.m. on January 26, 1977 Mr. Vance and the other agent arrived at the home of plaintiff Nancy Gullo Mazaris. The agents interrogated the husband of Nancy Mazaris who told them that he had not made contributions to CTEL and USLP.

32. At about 7:00 that evening the two agents returned to the Mazaris home. The agents asked plaintiff Mazaris many detailed questions about her political affiliations and beliefs and about the structural organization of CTEL and the USLP and of other organizations. The interrogation lasted more than one hour.

33. Two agents of the FEC visited the home of Philip Valenti, plaintiff, in Claymont, Delaware. They asked him many of the same questions and used similar techniques described in paragraphs 11 through 32. Mr. Valenti did not consent to the intrusion nor the interrogation.

34. Two agents, Elmo Allen and William Yowell, visited Charles Park, plaintiff, at his place of work in Boston,

Massachusetts on or about January 27, 1977. Mr. Park was notified by his fellow employees that the two men were in the waiting room to see him. Within view and hearing distance of his fellow employees, the agents orally identified themselves to Mr. Park as agents of the Federal Election Commission. Mr. Park took them to the company's cafeteria whereupon one agent began interrogating Mr. Park by stating "we have a list of LaRouche contributors" or words to that effect. Mr. Park did not consent to this intrusion, especially at his workplace, and refused to cooperate further with these agents.

35. On or about January 28, 1977, approximately at 4:00 p.m. Susan Chaplin, plaintiff, received a telephone call at her place of work from a person with a male voice and only identified as "an agent of the Federal Election Commission." Without her consent, he interrogated her, inquiring whether she was a contributor to CTEL and also wanted to personally interview her at work. Susan Chaplin objected and suggested to the agent that he contact her by the U.S. mail, whereupon the agent laughed rudely at her. Upset and frightened, Ms. Chaplin terminated the telephone call.

36. On or about January 25, 1977, a man identifying himself as Bob Dougherty from the FEC telephoned Barbara Dallas, plaintiff, and without her consent, began to interrogate her concerning her political affiliations and associations with the U.S. Labor Party, including asking her whether she had received any salary for working for the USLP.

37. Ms. Dallas felt intimidated, frightened, and tense during this interrogation and gave some incorrect answers to the questions. During the interrogation, a female voice on the telephone line, apparently monitoring the call, interjected in an audible whisper to Bob Dougherty "don't forget to ask her if she (Ms. Dallas) is employed." Bob Dougherty asked that question and also said he would call again later to see if her memory would improve so that she might give more complete answers.

38. On or about January 24, 1977, Theo Ford, plaintiff,

was visited by two unknown agents at his apartment in Milwaukee, Wisconsin, without his consent. The agents began interrogating him extensively, asking many of the same questions and using similar techniques described in paragraphs 11 through 35. The agents also demanded to know the name and addresses of other Milwaukee members of the U.S. Labor Party.

39. Theo Ford felt intimidated and harassed throughout the interrogation alleged in paragraph 38 and feared and continues to fear for the security and safety of his job because some of the questions concerned his employment.

40. On or about January 25, 1977, without prior notice, two employees of the FEC identifying themselves as Bob Dougherty and Peggy Sims, entered the apartment of Wayne Hintz without his consent, and interrogated him asking him many of the same questions and using the same techniques described in paragraphs 11 through 37.

41. On or about January 25, 1977, Nancy Lee Hintz, plaintiff and wife of Wayne Hintz referred to in paragraph 40, came home from work around 6:30 p.m. Immediately, she was contacted by Bob Dougherty via the intercom system, who wanted to interrogate her. Mr. Dougherty did not reveal to Mrs. Hintz that he had interrogated her husband Wayne Hintz earlier that day. Since her husband was not home at the time, Mrs. Hintz, intimidated and fearful of this intrusion, requested that further inquiries be made through the U.S. mails.

VI
FIRST CAUSE OF ACTION

42. Plaintiffs incorporate by reference paragraphs 1 through 41.

43. The actions of the defendants, their agents and employees described herein were willfully and maliciously designed to and had the effect of chilling, deterring, preventing and inhibiting plaintiffs from the free exercise of their rights of speech, petition, assembly and association under the first amendment of the Constitution of the

United States and directly interfered with the exercise of those rights.

VII
SECOND CAUSE OF ACTION

44. Plaintiffs incorporate by reference paragraphs 1 through 43.

45. The actions of the defendants, their agents and employees described herein were willfully and maliciously designed to and had the effect of violating plaintiffs' fourth amendment rights to be secure in their persons, houses, papers and effects, and to be free from unreasonable searches and seizures. Defendants searches and seizures were warrantless, unreasonable, without the consent of plaintiffs, and lacking any context of an emergency recognized by law.

VIII
THIRD CAUSE OF ACTION

46. Plaintiffs incorporate by reference paragraphs 1 through 45.

47. The actions of the defendants, their agents, and employees violated plaintiffs' fifth amendment rights by depriving plaintiffs of life, liberty and property without due process of law.

48. Plaintiffs' fifth amendment rights were further violated by defendants by their failure to warn plaintiffs that any statements or records given could be used against them, and thus violated their rights against self-incrimination.

49. Defendants have further deprived plaintiffs equal protection of the laws as determined applicable under the fifth amendment. There were thousands of contributors to the Republican and Democratic Party and their candidates and campaign committees; but only contributors and supporters of the U.S. Labor Party and the Committee to Elect Lyndon LaRouche were subjected to governmental action in this manner.

50. Plaintiff did not consent to the violation of these rights.

IX
FOURTH CAUSE OF ACTION

51. Plaintiffs incorporate by reference paragraphs 1 through 50.

52. Defendants, their agents, and employees have violated plaintiffs' sixth amendment rights of the U.S. Constitution by failing to advise them of their right to counsel and by failing to provide them with counsel.

53. Plaintiffs did not consent to the violation of their sixth amendment rights.

X
FIFTH CAUSE OF ACTION

54. Plaintiffs incorporate by reference paragraphs 1 through 53.

55. Defendants, their agents, and employees, violated plaintiffs' ninth amendment rights, including their right to privacy, without consent of plaintiffs.

XI
SIXTH CAUSE OF ACTION

56. Plaintiffs incorporate by reference paragraphs 1 through 55.

57. Defendants actions herein were outrageous and constitute an intentional infliction of mental and emotional distress.

XII
SEVENTH CAUSE OF ACTION

58. Plaintiffs incorporate by reference paragraphs 1 through 57.

59. The United States, as a signatory to the Conference

on Security and Co-operation in Europe, Final Act, Helsinki 1975, agreed under Part 1, Clause VII to

> "respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all (and) . . . promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development. . . .

60. The Federal Election Commission, as an agency of the United States, as well as its agents and employees, have violated this agreement as it pertains to plaintiffs, especially Clause VII and VIII.

XIII
EIGHTH CAUSE OF ACTION

61. Plaintiffs incorporate by reference paragraphs 1 through 60.

62. Plaintiffs are persons suffering legal wrongs because of the Federal Election Commission's actions and have been adversely affected by that agency's actions, and seek judicial review of those actions under the Administrative Procedure Act, 5 U.S.C. Sections 552, et seq.

63. The powers of the Commission are delineated in 2 U.S.C. Section 437c, which in pertinent part provides:

> "(a) The Commission has the power—
>
> (1) to require, by special or general orders, any person to submit *in writing* such reports and answers to questions as the Commission may prescribe; and such submission shall be made within such a *reasonable time* and under oath or otherwise as the Commission may determine;
>
> * * * *

(2) to require *by subpoena*, signed by the chairman or the vice-chairman, the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties." (emphasis added).

Defendants' actions were arbitrary, capricious and contrary to law, specifically 2 U.S.C. Section 437 d.

64. Title 5, United States Code, Section 555(c) provides in pertinent part that:

> "inspection, or other investigative act or demand may not be issued, made, or enforced except as authorized by law. A person compelled to submit data or evidence is entitled to retain. . . a copy . . . thereof."

Defendants' actions were arbitrary, capricious, and contrary to law, specifically 5 U.S.C. Section 555(c).

65. Defendants' actions were initiated because of the memorandum referred to in paragraph 11, which purported to authorize the "investigation" if the Commission did not object to it within 24 hours from the date of the memorandum. There is no indication that the members of the Commission, lawfully charged with carrying out the provisions of the Federal Election Campaign Act of 1974, as amended, were present at their offices, or if they were, whether they saw the memorandum or made aware of its existence.

66. The procedure for Commission action referred to in paragraph 65 is commonly used in other actions and is popularly referred to at the Commission as the "24-hour Rule."

67. The "24-Hour Rule" referred to in paragraph 66 and applied to plaintiffs is contrary to law and constitutes an abdication by all the members of the Commission of their responsibility to affirmatively make decisions under 2 U.S.C. Section 437c(c) which, in pertinent part states:

> "*All* decisions of the Commission with respect to

> the exercise of its duties and powers under the provisions of this title *shall* be made by a majority vote of the members of the Commission. . . . A member of the Commission may not delegate to any person his vote or any decision-making authority or duty vested in the Commission by the provisions of this title." (emphasis added).

68. Defendants' actions alleged herein are, as outlined in 5 U.S.C. Section 706, (a) arbitrary, capricious, or an abuse of discretion or otherwise not in accordance with law;

(b) contrary to constitutional right, power, privilege, or immunity;

(c) in excess of statutory jurisdiction, authority or limitations, or short of statutory right; and

(d) without observance of procedure required by law.

XIV
INJURY

69. Plaintiffs incorporate by reference paragraphs 1 through 68.

70. Plaintiffs have suffered, are suffering, and will continue to suffer severe and irreparable injury by virtue of defendants' acts, policies, and practices as set forth in the above eight causes of action. Their fundamental constitutional rights have been violated and will continue to be violated, and the acts of defendants are chilling and deterring the free exercise of rights of speech, association, privacy, movement, petition and press. Plaintiffs have no plain, adequate, or complete remedy at law to redress these violations of their constitutional rights, and this suit for injunction, declaratory judgment, judicial review, and damages is their only means of securing complete and adequate relief. No other remedy would offer plaintiffs substantial and complete protection from continuation of defendants' unlawful and unconstitutional acts, policies, and practices. As a minor political party, the U.S. Labor

Party's existence and viability has been and continues to be threatened by defendants actions. Correspondingly, Plaintiffs, as a class of contributors and supporters of the U.S. Labor Party and its candidates, have been deterred from continuing their support because of defendants' actions.

XV
REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

a. A declaratory judgment that the policies, practices, and acts complained of herein are illegal and unconstitutional.

b. A permanent injunction restraining the defendants, their agents and employees from:

(1) interfering in any manner with the free exercise of first amendment rights by the plaintiffs;

(2) subjecting plaintiffs to threats, or harassment, or conspiring with others to do so;

(3) subjecting plaintiffs to illegal and unconstitutional interrogations, searches, seizures, and invasions of privacy;

(4) violating plaintiffs fourth, fifth, sixth, and ninth amendment rights, as well as the Helsinki Agreement.

c. Compensatory damages for each individual plaintiff in the class in the amount of $20,000

d. Compensatory damages for the USLP of $1,000,000.

e. Compensatory damages for CTEL of $1,000,000.

f. Punitive damages

g. Expedited docket treatment to bring this case to trial at the earliest possible time.

h. Such other relief as this Court may deem appropriate, including costs and reasonable attorney fees.

Respectfully submitted,

/s/Joel D. Joseph
JOEL D. JOSEPH

/s/Paul D. Kamenar
PAUL D. KAMENAR
Attorneys for Plaintiffs
1712 Eye Street, N.W.
Suite 1010
Washington, D.C. 20006
338-5560

EXHIBIT "A" TO PLAINTIFFS' COMPLAINT

[LOGO OF THE FEC]

January 13, 1977

MEMORANDUM

TO: THE COMMISSIONERS

THROUGH: Orlando B. Potter
Bill Oldaker
Bob Costa
[Initialed by named FEC staff members]

FROM: Joe Stoltz
Charlie Steele

SUBJECT: Recommendation to Confirm Contributions to the Committee to Elect Lyndon LaRouche with Contributors

During the meeting of December 29, 1976, the Commission considered the attached memorandum dated December 27, 1976. This memorandum outlined the reasons that the staff believe further audit work is needed before matching payment eligibility can be determined in the case of the Committee to Elect Lyndon LaRouche. Part of the additional work that is considered necessary is the confirmation of contributions with contributors. The staff would propose to begin this process simultaneously with the commencement of the additional work at Committee headquarters. The staff further proposed to accomplish this confirmation via personal interviews. The personal interview method was chosen because of the patterns of contributions outlined in the December 27th memorandum and patterns of cash contributions developed since that time.

If no objection is raised within 24 hours, the staff will proceed as outlined above.

PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER, DATED JUNE 24, 1977

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 77-8732

LEROY B. JONES, et al.

Plaintiffs

v.

UNKNOWN AGENTS OF THE FEDERAL ELECTION COMMISSION, et al.

Defendants

MOTION FOR A TEMPORARY RESTRAINING ORDER, OR, IN THE ALTERNATIVE, FOR A PRELIMINARY INJUNCTION

Plaintiffs move this Court for a temporary restraining order, or in the alternative, for a preliminary injunction, to prevent the Federal Election Commission, and its officers, agents, representatives, employees and successors, from conducting investigations at the homes and workplaces of members and contributors to the United States Labor Party (USLP) and the Committee to Elect LaRouche (CTEL). Specifically, plaintiffs further move this Court to prevent the FEC and its agents from contacting any and all contributors to CTEL and USLP in person, or by telephone anywhere in the United States, on any

matter, including interrogating them concerning the nature of their contributions, their political beliefs and philosophy, and the organizational structure of CTEL and USLP.

Plaintiffs further move that the FEC and its agents be prevented from harassing, investigating or contacting plaintiffs and auditing their books and records.

Plaintiffs have, and will continue to suffer irreparable harm, loss and deprivation of important constitutional rights unless a temporary restraining order or a preliminary injunction is issued to preserve the status quo. The plaintiffs have no adequate remedy at law.

If defendants are permitted to carry out their recent threat to continue unlawful investigations of contributors, plaintiffs' constitutional rights of freedom of association, freedom of speech, freedom from unreasonable searches and seizures, their right to due process, counsel and privacy will be infringed. Defendants will suffer no harm by delaying or postponing their investigations. The balance of the equities is on plaintiffs' side and the issuance of a restraining order or injunction is in the public interest.

For these reasons, and those contained in the memorandum in support of this motion, the affidavits and in the complaint herein, this Court should issue the appropriate injunctive relief so that the status quo will be preserved.

Respectfully submitted,

/s/Joel D. Joseph
JOEL D. JOSEPH

/s/Paul D. Kamenar
PAUL D. KAMENAR

Attorneys for
Plaintiffs

Suite 1010
1712 Eye St., N.W.
Washington, D.C. 20006
338-5560

CERTIFICATE OF SERVICE

I certify that I have hand delivered a copy of this motion, the memorandum in support thereof, affidavits and a proposed order to counsel for defendants.

/s/Paul D. Kamenar
PAUL D. KAMENAR

AFFIDAVIT OF LEROY JONES

COUNTY OF NEW YORK:
STATE OF NEW YORK:

I, LEROY JONES, do hereby swear and depose that the following is true.

1. I reside at 4 Brandywine Blvd. in Wilmington, and have lived there for 23 years.

2. I am a member of the U.S. Labor Party and a contributor to the Committee to Elect LaRouche in 1976.

3. At 7:45 on the morning of January 26, 1977 my wife answered a knock on our front door with two men at the door indicating to her that they were from the Federal Election Commission.

4. My wife told me that they asked if a Robin Kieffer or Chris Douglas were there, to which she replied that they weren't.

5. My wife then woke me up and told me who was there and that they wanted to speak to me.

6. I went to the door and one of the men showed identification to the effect that he was from the Federal Election Commission, and that his name was Keith Vance.

7. Mr. Vance asked me how much money I gave to the Committee to Elect LaRouche, and where I got the money from.

8. I answered these questions to the best of my knowledge.

9. Mr. Vance asked to see my canceled checks and asked what date I had written the check.

10. I answered that I didn't think I had either bit of information on hand immediately at which point he did say to me: If you don't give me the exact information I asked for you could get sentenced up to 10 years in jail and be given a $10,000 fine . . . you've got a nice house here, you wouldn't want to lose it would you?

11. He said this in an extremely threatening tone, at which point I went upstairs and searched with my wife for 1/2 hour looking for receipts. I showed Mr. Vance

my tax returns and a canceled check from a contribution made to the CTEL in December.

12. Mr. Vance asked me if I made all contributions by check, and wanted to know the banks the checks were drawn on.

13. I answered these questions to the best of my ability.

14. Mr. Vance then began asking numerous questions as to my political affiliations and beliefs.

15. He demanded to know where a Robin Kieffer and Chris Douglas were living, and the exact dates that they lived at my house.

16. I answered these questions to the best of my ability indicating where further information could be gotten about these matters.

17. Mr. Vance then began asking numerous questions as to how the Labor Party raises its money, who its contributors are, etc. all of which I answered to the best of my ability.

18. Mr. Vance then asked me for all my personal bank account numbers and all Labor Party bank account numbers and demanded that we sign statements permitting them to inspect my bank accounts, threatening me with the same reprisals should I refuse.

19. In great fear I signed the statements, and received no copy or receipt.

20. Mr. Vance then renewed questioning asking what activities I had engaged in with the party and who paid my expenses. These questions were detailed and very personal.

21. Mr. Vance then turned to my wife and gave her his business card and told her: If you want to change your story, just get in touch with him at the number listed on the card.

22. They left at 9:15 AM.

23. Both my wife and myself felt thoroughly intimidated and in fear of loss of security and property were we not to comply with Mr. Vance's questions. At no point was I informed of my rights or as to the nature and purpose of the interrogation.

24. I contacted the Labor Party headquarters after the interrogation and informed them of what had happened.

25. Because of the great tension experienced on this occasion I had to make an extraordinary visit to my doctor on Tuesday, Feb. 2nd. He took an electro-cardiogram for precaution after I had told him of the incident and changed the prescription of the medicine. I have a heart condition and have experienced over 1 dozen heart attacks over the past period. I am 59 years old, and retired because of my medical condition.

/s/Leroy B. Jones
LEROY B. JONES

Sworn to before me
this 2nd day of February, 1977
MARIE MENDEZ
Notary Public State of New York
No. 314020518

AFFIDAVIT OF TERRY TINNIN

COUNTY OF PHILADELPHIA
STATE OF PENNSYLVANIA
MARCH 21, 1977

I, TERRY TINNIN, do hereby swear and depose that the following is true to the best of my knowledge, opinion, and belief.

1. That I live at 4403 Walnut St. in Philadelphia, and have lived there for 4 months.

2. That before then I resided for some time in the state of Delaware functioning as a Labor Party organizer.

3. That on ____ at approximately 4:45 pm I was called at my place of work at Russell and Kensington Sts. in Philadelphia at the Russell Ribbon Corp. by a man identifying himself as an official of the Federal Election Commission.

4. That he began asking a number of questions pertaining to my personal finances, to my financial relationship to a number of organizations including CTEL, the Labor Party, and the "National Caucus of Labor Committees," and about contributions I had made to the Committee to Elect LaRouche while I lived in Delaware.

5. He repeatedly asked if I was paid by any of these organizations and if these groups had "given me money to contribute."

6. They asked me if I had done fundraising for the Labor Party or the CTEL.

7. I felt intimidated and under investigation and interrogation by this man, with the man keeping me on the phone and off of my job for at least twenty minutes, seriously jeopardizing my job as this is an irregularly long time to be called away for a phone call.

/s/Terry Tinnin
TERRY J. TINNIN

Sworn to and subscribed before me
this 21st day of March 1977

/s/Bernard Salera

NOTARY
BERNARD SALERA
Notary Public,
Philadelphia, Pennsylvania
Co.
My Commission Expires
October 20, 1979

AFFIDAVIT of DAVID LEE HOAGLAND

DAVID LEE HOAGLAND
June 14, 1977

I, DAVID LEE HOAGLAND, do hereby swear that the following is true:

1. That I reside at 3000 W. Godman, Muncie, Indiana, and that I am thirty-six years old.

2. That I am a member of the U.S. Labor Party.

3. That I was a financial contributor to the 1976 Committee to Elect Lyndon H. LaRouche, Jr. President.

4. That when I arrived home from work on June 14, 1977 my daughter told me that the Federal Election Commission had called my wife and set up an appointment to come to the house at 7:30 PM the same evening.

5. That the representative from the Federal Election Commission told my wife that he wanted to inquire about campaign contributions which my wife and I made to the Committee to Elect LaRouche.

6. That at approximately 5:00 PM, I spoke to Greg Rhodes over the telephone. Greg was also a contributor to the LaRouche campaign.

7. That Greg told me that two people from the Federal Election Commission had come to his place of employment on June 14, 1977 to inquire about contributions he made to the Committee to Elect LaRouche.

8. That Greg was very nervous and scared. He said that the people from the Federal Election Commission told him they knew all about me and that he should not tell me that he had talked to them.

9. That I asked Greg what the people from the FEC wanted.

10. That Greg said: "The people from the FEC had cancelled money orders and other stuff I can't tell you about over the phone. We're in trouble."

11. That I told Greg that the FEC investigators were not operating within the law, that there were no problems

with the Committee to Elect LaRouche finances and that he should not be worried.

12. That following my conversation with Greg, I called the U.S. Labor Party regional center in Detroit, Michigan in order to get legal advice.

13. That I spoke to Stephen Romm who informed me that the FEC has no legal right to come into my house and gather information regarding my campaign affiliations and contributions.

14. That Mr. Romm told me to ask for identification from the FEC investigators and arrange to communicate any information through the mail.

15. That at 7:30 PM on June 14, 1977, a middle-aged man and a woman in her twenties came to my door.

16. That I spoke to them outside my front door, asking both of them for their identification.

17. That the two FEC investigators identified themselves with written credentials as Senior Investigator E. Craig Crooks and Mrs. E. Rosenfield.

18. That Mr. Crooks asked if I was very aware of what the FEC represented.

19. That I told Mr. Crooks that I was aware of what the FEC was.

20. That Mr. Crooks said they were from Washington, D.C. and happened to be in the area.

21. That Mr. Crooks told me that they had documents that they wanted me to look at.

22. That I told Mr. Crooks that it was highly irregular for them to make house visits and if they wanted me to examine anything or to provide them information they should send me a questionnaire or a written request for an appointment at an appropriate Federal office.

23. That Mr. Crooks and Ms. Rosenfield maintained that they did make an appointment with my wife. I told them that had I been home to receive their call, I would not have set the appointment.

24. That the two FEC investigators returned to their car and drove away.

SIGNED

DAVID L. HOAGLAND

NOTARY PUBLIC

FREYDA B.
GREENBERG

MY COMMISSION
EXPIRES

April 12, 1980

AFFADAVIT of WILLIAM TOPPIN

January 28, 1977

I, WILLIAM TOPPIN, do hereby swear that the following is true.

1. I live at 103 Chesterfield Road, New Castle, Delaware.

2. On Wednesday, January 26, 1977, at about 10:30 A.M., two men appeared at the door of my home.

3. They claimed they were from the Federal Election Commission.

4. They came into my house, showed me identification, and said they wanted to ask me some questions.

5. One of the agents was named Vance. I do not recall the other agent's name.

6. They told me I might have to go to Washington, D.C. to testify in Federal Election Commission hearings there.

7. They asked me questions in minute detail about how much and by what means I contributed money to the Committee to Elect Lyndon LaRouche during the 1976 presidential campaign.

8. They also continually questioned me about how much money I have given to the U.S. Labor Party.

9. They wanted to know how much money I gave to the Committee to Elect Lyndon LaRouche, how I gave it, who I gave it to, if it was by personal check or cashier's check, etc.

10. They demanded to know if I was buying the house I was living in, or if I was just renting it.

11. They demanded to know if I was a member of the National Caucus of Labor Committees.

12. They demanded to know if I organized with the U.S. Labor Party.

13. They demanded to know what people did when they organized with the U.S. Labor Party.

14. They demanded to know if I shared the Labor Party's beliefs.

15. They demanded to know the whereabouts of other U.S. Labor Party members in Delaware.

16. I was intimidated by their questioning because they were belligerent, and because throughout the interrogation the agents were continually misquoting statements I had previously made, and trying to get me to agree to their reformulation and distortion of my previous statements.

17. The agents compelled me to draw up a statement about my contributions to the U.S. Labor Party and the Committee to Elect Lyndon LaRouche and sign it.

/s/William H. Toppin
WILLIAM TOPPIN

Sworn to and subscribed before me
this 28th day of January, 1977
/s/Richard P. McNamee
NOTARY

RICHARD P.
McNAMEE
Notary Public, Philadelphia
Co.
My Commission Expires
February 21, 1980

AFFIDAVIT of THEO FORD

STATE OF WISCONSIN
ss.
MILWAUKEE COUNTY

I, THEO FORD, being first duly sworn on oath depose and say as follows:

1. That on the morning of January 24, 1977 or thereabouts, I was visited at my residence at 6019 W. Custer, Milwaukee, Wis., by a man and a woman, both approximately 30 years of age, who asked if I was Theo Ford. I answered affirmatively, and they entered my apartment.

2. They showed me an identification card, indicating that they were employees of the Federal Election Commission. I glanced at the card, and they then informed me that they wished to ask me questions regarding matching funds for the U.S. Labor Party.

3. They first asked how much money I had contributed to the LaRouche 1976 presidential campaign, and whether any such money had been contributed in a lump sum or in increments.

4. I answered their question to the best of my ability, saying that I had contributed $100.00 in a lump sum.

5. They then asked me if I organized with the U.S. Labor Party and if so, whether or not I was paid for any such organizing.

6. I felt extreme anxiety as a result of this question because it then occurred to me that there was a possibility that my organizing for the U.S. Labor Party might somehow affect the validity of my contributions to LaRouche's campaign.

11. The two men then left the premises, and in great fear I called the office of the U.S. Labor Party in Milwaukee and informed them that I had been visited by two persons alleging to be employees of the Federal Election Commission.

12. During the interview I felt anxious and intimidated

and feared retribution and further harassment if I did not answer the questions put to me.

13. At no time during the interview did the two men inform me of my legal rights regarding the visit. Since they entered my apartment, I felt pressured to answer their questions, although at no time during the interview did I think that they gave me valid reasons for asking me such extremely personal questions.

14. For a period of days after the interview I constantly feared for the security of my job.

/s/Theo Ford
THEO FORD

Subscribed and sworn to before me
this 18th day of March, 1977
/s/Norman Sloan
Notary Public, Milwaukee
Co., Wisconsin
My commission expires
February, 1980

EXHIBIT A

LAW OFFICES
PAUL D. KAMENAR
1712 EYE STREET, N.W.
SUITE 1010
WASHINGTON, D.C. 20006
(202) 338-5560

June 17, 1977

The Honorable Thomas E. Harris
Chairman, Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Dear Mr. Chairman:

It has come to my attention that at least two Federal Election Commission investigators have been conducting visits earlier this week at the homes and workplaces of several contributors to the United States Labor Party and the Committee to Elect Lyndon LaRouche in the Indianapolis, Indiana area. Ostensibly, the surprise visits are for the purpose of verifying contributions for matching funds.

On behalf of the United States Labor Party and the parties involved, I must insist that you immediately cease all such field investigations until the resolution of the two legal actions that are now pending here in the United States courts. As you may know, those cases allege that the matching verification process and conduct of FEC investigators are serious violations of statutory procedures and important constitutional rights.

If you do not intend to comply with this request, please notify me at once so that other legal remedies may be pursued to safeguard the rights of the parties involved. If I do not hear from you within 72 hours from the time of

the delivery of this letter to your office, I will assume that you and the Commission will not honor this request.

Thanking you for your prompt consideration of this matter, I remain,

Very truly yours,

Paul D. Kamenar

cc: Attorney General
Barbara Allan Babcock, Dept. of Justice
Robert Franzinger, Dept. of Justice
William Oldaker, Federal Election Commission

EXHIBIT B

[logo of the FEC]

June 20, 1977

Mr. Paul Kamenar
1712 Eye Street, N.W.
Suite 1010
Washington, D.C. 20006

Dear Mr. Kamenar:

This letter is in response to your hand-delivered letter of June 17, 1977, in which you request that all field investigations cease until the resolution of *Jones et al. v. Unknown Agents of the Federal Election Commission* (D.C. D.C. 77-0732) and *LaRouche v. FEC* (D.C. C.A. 77-1184).

It appears that 72 hours to properly respond to your request is patently unreasonable especially in view of the fact that 48 hours of that time was over a weekend. I can assure you that the Commission will act upon your request within a reasonable time. Only after the full Commission has had an opportunity to discuss the matter, will we be in a position to comply with or deny your request.

Sincerely,

/s/William C. Oldaker
WILLIAM C. OLDAKER
General Counsel

EXHIBIT C

[logo of the FEC]

June 23, 1977

Mr. Paul Kamenar
1712 Eye Street, N.W.
Suite 1010
Washington, D.C. 20006

Dear Mr. Kamenar:

This letter is to inform you that on June 22, 1977, the Commission determined by a vote of 6-0 to deny your request that the Commission voluntarily cease all investigations pertaining to compliance matters concerning your clients pending resolution of *Jones v. Unknown Agents of the Federal Election Commission* (D.C. D.C. 77-0732) and *LaRouche v. FEC* (D.C. C.A. 77-1184).

The Commission is statutorily mandated to conduct all compliance matters expeditiously, 2 U.S.C. §437g(a) (10), and will comply with its mandate in this instance. If you have any questions, please contact Biz Van Gelder (telephone no. 202/523-4175), the attorney assigned to this matter.

Sincerely yours,

William C. Oldaker
General Counsel

EXHIBIT D

[Logo of the FEC]

January 13, 1977

MEMORANDUM

TO: THE COMMISSIONERS

THROUGH: Orlando B. Potter
Bill Oldaker
Bob Costa
[Initialed by named FEC staff members]

FROM: Joe Stoltz
Charlie Steele

SUBJECT: Recommendation to Confirm Contributions to the Committee to Elect Lyndon LaRouche with Contributors

During the meeting of December 29, 1976, the Commission considered the attached memorandum dated December 27, 1976. This memorandum outlined the reasons that the staff believes further audit work is needed before matching payment eligibility can be determined in the case of the Committee to Elect Lyndon LaRouche. Part of the additional work that is considered necessary is the confirmation of contributions with contributors. The staff would propose to begin this process simultaneously with the commencement of the additional work at Committee headquarters. The staff further proposed to accomplish this confirmation via personal interviews. The personal interview method was chosen because of the patterns of contributions outlined in the December 27th memorandum and patterns of cash contributions developed since that time.

If no objection is raised within 24 hours, the staff will proceed as outlined above.